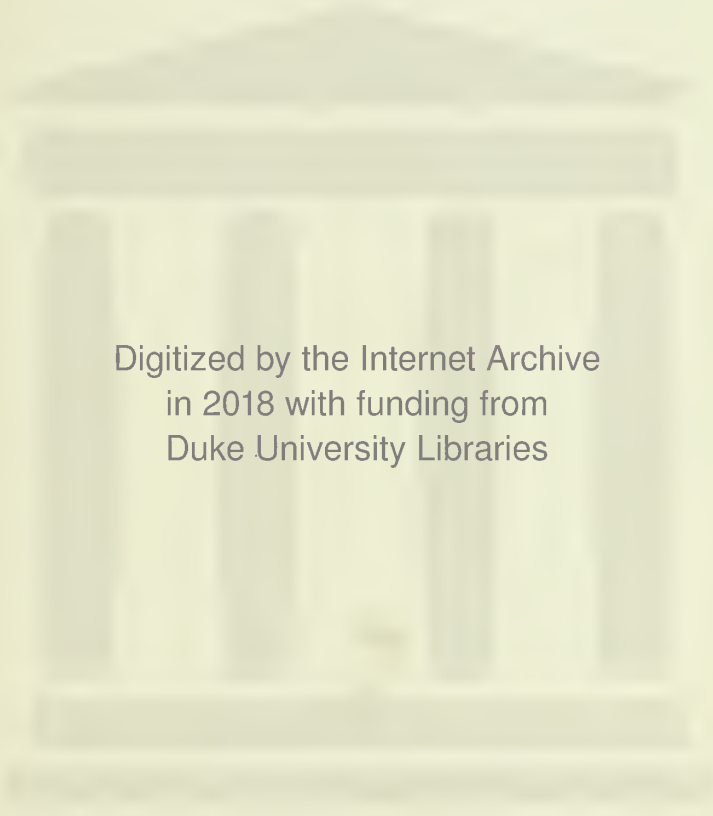

REPORT

of the

Departmental Committee

on

PERSISTENT OFFENDERS

Presented by the Secretary of State for the Home Department
to Parliament by Command of His Majesty
May, 1932

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COPY OF WARRANT OF APPOINTMENT.

I Hereby Appoint—

The Honourable Sir John C. Dove-Wilson, K.C.,
Mr. H. du Parcq, K.C.,*
Mr. David Crombie, I.S.O.,
Mr. W. N. East, M.D., M.R.C.P.,
Mr. Dan Griffiths,
Mr. A. Maxwell, C.B.,
Mr. J. Wellesley Orr,
Mrs. M. Stocks, J.P.,

to be a Committee to enquire into the existing methods of dealing with Persistent Offenders, including Habitual Offenders who are liable to sentences of Preventive Detention and other classes of offenders who return to prison repeatedly, and to report what changes, if any, are desirable in the present law and administration.

And I Further Appoint the Honourable Sir John C. Dove-Wilson to be Chairman and Mr. A. Johnston, of the Home Office, to be Secretary of the Committee.

(Signed) J. R. Clynes.

Home Office;
21st April, 1931.

* Now the Honourable Mr. Justice du Parcq.

TABLE OF CONTENTS.

Note—The estimated cost of the preparation of this Report (including the expenses of the Committee) is £1141 18*s.* 10*d.*, of which £75 is the estimated cost of printing and publishing this Report.

DEPARTMENTAL COMMITTEE ON PERSISTENT OFFENDERS.

REPORT.

To the Right Honourable Sir HERBERT SAMUEL, G.C.B., G.B.E., M.P., His Majesty's Secretary of State for the Home Department.

SIR,

We, the undersigned members of the Committee appointed—

> "to inquire into the existing methods of dealing with persistent offenders, including habitual offenders who are liable to sentences of preventive detention and other classes of offenders who return to prison repeatedly and to report what changes if any are desirable in the present law and administration,"

have the honour to submit our report.

We desire in the first place to put on record our high appreciation of the services of our Secretary, Mr. Johnston, whose ability, knowledge and industry have been a great assistance throughout the enquiry and in the framing of this report.

We have held 39 meetings and have examined 66 witnesses. The names of those witnesses, and of the associations and private individuals who submitted written statements but did not give evidence, are set out in Appendix 1 to this report. We desire to express our thanks to all who submitted statements and gave evidence for the assistance they have given in the examination of the problems referred to us for enquiry.

We visited various convict and local prisons, a Borstal Institution and the preventive detention prison at Camp Hill.

CHAPTER I.

The Ineffectiveness of Present Methods of Dealing with Persistent Offenders.

2. The need for an enquiry into the methods of dealing with persistent offenders arises not because the number of criminals in this country is large, but because a large proportion of the persons convicted of offences have been repeatedly guilty of previous offences and are neither reformed nor deterred by the sentences passed upon them.

3. In the year 1930 out of a population of 40,000,000 in England and Wales* the receptions† into the prisons of persons convicted of indictable offences numbered 15,700, including 9,572 cases of larceny, 2,084 cases of burglary and housebreaking, and 1,307 cases of obtaining money or goods by false pretences. In addition there were 17,400 imprisonments for offences which are more in the nature of nuisances than of crimes, such as drunkenness, begging, offences against police regulations and offences against the Poor Law; and 5,900 imprisonments in respect of offences akin to indictable offences, including assaults and loitering with intent to commit a felony.

In all there were 39,000 imprisonments of persons convicted of offences, but 12,500 resulted from failure to pay fines, leaving only 26,500 cases in which imprisonment was imposed without the option of a fine.

The receptions for 1930 were slightly higher than for 1929, but not higher than the average for the last five years; and they were only a quarter of the average number of receptions in the five years from 1910 to 1914.

Of the 39,000 sentences of imprisonment 28,000 were imposed on persons who had been previously found guilty of offences. In many cases these previous offences had been dealt with by methods other than imprisonment, such as the use of probation, binding over, and fines; but in 20,384 cases the offenders had been previously in

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* The figures for Scotland are set out in Appendix 2.

† The term "receptions" is used because many prisoners after finishing one sentence are convicted again and sent to prison again in the course of the same year. Consequently, the number of receptions is always greater than the number of different individuals received into prison. It is estimated that 39,000 receptions represent about 32,000 separate individuals.

prison. Many of them had served repeated sentences of imprisonment as is shown by the following table—

4,740	had served 1 previous sentence.
2,952	had served 2 previous sentences.
1,949	had served 3 previous sentences.
1,499	had served 4 previous sentences.
1,115	had served 5 previous sentences.
3,382	had served 6-10 previous sentences.
2,622	had served 11-20 previous sentences.
2,125	had served over 20 previous sentences.
20,384	

4. No statistics are available showing what proportion of those who come to prison for the first time do not return, but all persons who are experienced in prison administration agree that a very large proportion of these " first-timers " are not reconvicted. Of the comparatively small number of persons who return to prison on a second sentence a large proportion, however, come back repeatedly; the probability of relapse increases with the number of previous sentences, and a substantial part of the prison population consists of a " stage army " of individuals who pass through the prisons again and again.

5. The inference is that the present methods not only fail to check the criminal propensities of such people, but may actually cause progressive deterioration by habituating the offenders to prison conditions, which weaken rather than strengthen their characters. That the present methods of dealing with persistent offenders are unsatisfactory is the general burden of all the evidence we have received, whether from witnesses who have judicial or magisterial experience, or from representatives of the police, or from prison administrators, or from social workers and philanthropists, or from medical experts and psychologists.

6. In most cases the only practicable course open to a Court when dealing with a persistent offender is to send him to prison for a period proportionate to the gravity of the particular offence of which he stands convicted. During this period society is temporarily protected against injury from this individual, but the period of protection is limited (nearly 80 per cent. of imprisonments are for periods not exceeding three months and less than 4 per cent. are for periods exceeding one year); and if on the offender's release he speedily commits other offences, the expenditure of trouble and money by the Police who have to catch him, by the Judicial Authorities who try him, by the Prison Authorities who house, feed, clothe, and guard him, and by the Prisoners' Aid Societies who help him on his discharge, is out of proportion to the result achieved—to say nothing of the harm which may be caused to the public by the offences he commits between his periods of imprisonment.

7. How much harm may be done by certain types of persistent offenders between their periods of imprisonment is shown by the records of criminals who, when caught and convicted of one or two offences, ask that other crimes may be taken into consideration before sentence is passed in order that they may not after serving one sentence be liable to be convicted and sentenced again in respect of these previous offences. In the introduction to the "Criminal Statistics" which was published in 1930,* there are references to the case of a man convicted of housebreaking and sentenced to five years' penal servitude who, before he was sentenced, asked that no less than 315 offences in addition to those charged in the indictment should be taken into consideration and to the case of a man sentenced to three years' penal servitude for "memorial plaque" frauds on relatives of men killed in the war, who, before being sentenced, asked that no less than 232 similar offences committed throughout the country should be taken into consideration.

Our attention has also been called to cases of sexual offenders who have numerous convictions of offences—including such offences as indecent assaults on children—spread over long periods of years. It is probable that the many offences of which such men are convicted are by no means all the offences they have committed, and the harm done by such offenders between their periods of imprisonment must be great†.

8. Moreover, the present system not only fails to provide adequate protection for society : it also fails to provide the treatment of which many persistent offenders stand in need. Amongst the offenders who are at present sentenced again and again to short terms of imprisonment, there are some who, if subjected to a substantial term of training, might respond to such treatment; there are others who require control for their own protection; and there are others who might be deterred from continuing their criminal careers, if the consequence to be apprehended were not a short term of imprisonment for the offence which happens to be detected but a long term of detention for persistence in crime.

9. The evidence of prison authorities is to the effect that these persistent offenders may be divided into three classes. First there are the offenders of relatively strong character and mentality who deliberately choose a life of crime. Many of them are young and they might be amenable to reformative treatment. Secondly there are the offenders of weaker mentality and weaker moral character who drift into crime because they are unable to face the difficulties of ordinary social life. Thirdly there are the pathological cases to which we refer in Chapter XI and who may be amenable to medical and psychiatric treatment. There is of course no sharp distinction

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* Criminal Statistics (England and Wales), 1928. Cmd. 3581.

† One extreme case was brought to our notice in which a man had 16 convictions, extending over 30 years, for indecent assaults on young girls.

between those categories especially as between the first and second, and many cases belong to a border region in which various causes of widely differing character appear to be at work.

10. A full enquiry into the general causes of crime and the possibility of its prevention, would raise large problems of sociology, economics, education, psychology and public health which are beyond the scope of our enquiry. Our enquiry is limited to methods of dealing with persons who have become or are becoming persistent offenders. Within our limited field of reference it is possible to suggest some ways in which improvements can be sought in regard to treatment. It is possible, even, to indicate certain more immediate causes which assist the manufacture of persistent offenders, in so far as these causes can be affected by changes in "the present law and administration." But we recognise that recommendations within the scope of our enquiry can at the best provide only partial remedies.

CHAPTER II.

The Initial Stages of Persistent Criminality.

11. Every persistent offender has been at one time a "first offender" and in a review of the methods of dealing with persistent offenders account must be taken of the methods of dealing with these persons before their persistence in crime has been developed or become manifest.

In some of them the tendencies which lead to persistence in wrong doing may have developed long before the offender is charged in a court of law; and it may at that stage be exceedingly difficult, or perhaps impracticable, to devise corrective measures which will be efficacious: but the way in which an offender is treated on his first appearance in Court on a criminal charge is likely to have a momentous effect for good or for evil on his subsequent career. The action taken by the Court at this critical juncture may greatly diminish or greatly increase the chances of his becoming a persistent offender in the future.

12. Much progress has been made in recent years in the methods of dealing with young offenders. The whole question of the treatment of offenders under 21 was reviewed by the Departmental Committees appointed in England and Scotland in 1925 on the treatment of young offenders,* and we do not propose to go over the ground covered in so much detail by those Committees. Bearing in mind, however, the supreme importance of these earlier years, there are some salient points which seem to us to require emphasis. For example, it is well known that the offences of children are often attributable to bad home surroundings, and among the child delinquents there must be large numbers whose homes and associates are such that there is a grave danger of their growing up to be persistent offenders. Yet we find that in 1930, out of 15,932 boys and girls under 16 who were proved guilty in England and Scotland of the type of offences classed in England as indictable offences, only 1,384 were sent to Reformatory or Industrial Schools. The training in these Schools is successful with 90 per cent. of their pupils, and "it would seem" in the words of the Introduction to the Criminal Statistics "that greater use might well be made of the Home Office Schools."†

13. Again, although the number of young persons between 16 and 21 years of age sentenced to imprisonment has fallen from 4,300

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* Report of the Departmental Committee on the Treatment of Young Offenders, 1927 (Cmd. 2831); and "Protection and Training", the Report of the Scottish Departmental Committee, 1928.

† Criminal Statistics (England and Wales), 1929. Cmd. 3853

in the year 1921 to 1,950, in the year 1930, the Annual Reports of the Prison Commissioners show that many youths between 16 and 21 whose previous convictions indicate that they have criminal tendencies, are sent to prison for short periods instead of being committed for Borstal sentences. The view of the Prison Authorities is that for a youth who has already started on a career of crime a short sentence of imprisonment often increases the chances of his becoming a persistent offender, whereas Borstal training greatly diminishes the chances.

14. The Probation system is the latest and by no means the least valuable method of dealing with offenders of all ages. Properly applied the system cannot fail to be a potent influence in the prevention of crime. In suitable cases—and these may include cases where the offence is grave—the personal influence and supervision of a good Probation Officer may provide the most effective method of reclamation. On the other hand, if young people who have bad home surroundings or are in need of training are put on probation and left in their old surroundings instead of being sent to Home Office Schools or Borstal Institutions, or if offenders are repeatedly placed on probation despite previous failures, there is every likelihood that they will soon be among the prison " ins and outs ".

15. The first sentence of imprisonment is a turning point in an offender's career and his treatment in prison on this first occasion will often have a decisive influence on his future career.

The question has been raised by one or two witnesses whether more offenders would not be deterred from incurring the risk of a second experience if prison conditions were made somewhat harder. Imprisonment would be more effective if prison industries were improved and harder work were done in prisons; but a return to the policy of severity for severity's sake would provide no remedy. As the long history of the penal system shows, severity is a double-edged weapon and if the offender leaves prison a worse man and a more embittered enemy of society than he was when he came in, society is injured equally with the offender. The object of modern changes in prison treatment has been to remove or modify the features which conduced to deterioration of mind or character and to make imprisonment, so far as possible, a period of training. This aim is not inconsistent with the deterrent function of imprisonment. In addition to the deterrence resulting from loss of liberty, training—if the system is efficient—is a deterrent experience. It should demand from the prisoner a higher standard of effort in work and behaviour and self-discipline than is demanded by a purely punitive system.

16. For many an offender it is said that his punishment begins not when he goes into prison, but when he comes out. Imprisonment often causes an almost irreparable break with home, friends, work and character; and unless an ex-prisoner can find employment and

be restored to some social status, the chances of his relapsing into crime are increased. The arrangements made for helping prisoners on discharge—especially prisoners serving a first sentence—have an important bearing on our problem, and later in our report (see paragraphs 78 and 90) we make some suggestions on this subject.

17. If we attempted to survey more fully this preliminary problem of the methods of dealing with offenders in the early stages of their criminal career, we should be led too far astray from the specific question which we were appointed to examine, but before proceeding to consider methods of dealing with persistent offenders we wish to emphasise the importance of the proper treatment of offenders when they first come within the grasp of the law. It is at this stage that wise methods can do most to diminish the probabilities of their becoming habitual prison inmates.

CHAPTER III.

How the Length of Sentences of Imprisonment is Determined.

18. For the purpose of our enquiry it has been necessary to consider what powers a Court has, when dealing with a persistent offender under the criminal law, to relate the sentence to his persistence in crime. Certain special powers are conferred on Courts by the Prevention of Crime Act, 1908 (which we shall discuss later) and by other Acts; but apart from these special provisions the powers of a Court to increase a sentence because the offender has a record of previous convictions is limited—if we understand the matter aright—by the following general principles.

19. The primary consideration in determining the nature of the sentence to be imposed is the intrinsic character of the particular offence committed. In order that there may be a proper grading of sentences to fit the many degrees of gravity presented by the various cases which fall within the same legal category, it is necessary that the maximum sentence authorised by law should be reserved for the rare offences which are exceptionally heinous, that sentences approaching the legal maximum should be reserved for offences falling within the next degree of gravity, and so on—with the result that for ordinary offences (such as form the great majority of cases coming before the Courts) the heaviest sentence which the Court feels justified in imposing is usually far below the maximum sentence authorised by law for the category of offence in question.

In assessing the gravity of the offence numerous factors have to be taken into account. In no two cases are the facts precisely similar, and it is the duty of the Court to take into consideration all the circumstances and consequences of the offence. For example if a persistent office-breaker breaks into a railway booking office with intent to steal large sums of money and for some reason or other only manages to obtain a few trifling articles, the Court will probably consider appropriate a very much lighter sentence than if he had succeeded in his object.

20. In addition to considering the facts and circumstances of the offence it may be necessary for the Court to have regard to such points as the offender's age, his health, his circumstances, the prevalence of the offence and other matters. Moreover, views may change from generation to generation as to the sentences appropriate to particular types and classes of offences. The very long sentences which were often passed twenty years ago are now usually regarded as harsh and excessive and are seldom imposed. All these factors prevent any precise standardisation of sentences, but nevertheless there is among judicial authorities a large measure

of agreement on general principles and the practice of the Courts creates certain general standards. Sentences heavier than are warranted by these standards are liable to be reduced on appeal.

21. As we understand the position, it is only within the limit of the heaviest sentence warranted by these standards for the particular offence that the offender's record falls to be considered. For example, the legal maximum sentence for larceny is five years' penal servitude, but the Recorder of London told us that for larceny of a bicycle he would never feel justified in giving a longer sentence than twelve or fifteen months' imprisonment, no matter how often the offender had been previously convicted.

If the record of an offender is good, this may influence the Court towards a lenient sentence; conversely, a bad record will influence the Court towards a heavier sentence; and the difference resulting from an offender's record may be great. For example a man with a good record may be merely bound over for an offence which if committed by a man with a bad record would entail a substantial term of imprisonment; but however bad the record may be, it is not open to the Court to pass upon him a sentence heavier than is warranted by the standards indicated above for the specific offence on which the Court is adjudicating. Accordingly, when a persistent offender with numerous previous convictions, which perhaps include convictions of grave offences, is convicted of some less serious crime, his sentence on this occasion must not exceed the term which is appropriate to this less serious crime.

22. The application of these general principles to the cases of persistent offenders accounts for the fact that their records seldom show (except in the initial stages) a graded series of sentences consistently increasing in length as they increase in number. In the initial stage of a criminal career a gradual increase in the severity of sentence is common. Frequently a record shows that the offender, after being bound over or fined on one or two occasions, is first sent to prison for a short term, then for a longer term, and then perhaps to penal servitude. But after this initial stage is passed, the records of persistent offenders usually show a medley of shorter and longer sentences intermixed. If the offender confines himself to small thefts or small frauds, there may be among his numerous sentences none longer than—say—a year, but frequently a sentence of a year will be followed by a sentence of—say —three months. If the offender's activities include housebreaking and larceny, his record may show some sentences of penal servitude, but between these sentences or subsequent to one or more of them there will usually be interposed sentences of a few weeks or a few months.

23. Probably these sentences of a few weeks or a few months are the maximum sentences which the Courts, proceeding on the principles outlined above, felt to be warranted for the specific offences in question. But no one can look at the chronological lists

of sentences served by these persistent offenders without recognising that for such persons sentences of a few weeks or a few months can have little significance. The prisoner has long ago lost his character and reputation. He has no regular employment; he has become habituated to prison conditions, and deprivation of liberty for a short period may often seem to such a man a matter of small moment.

24. It is, of course, necessary to preserve the general legal principle that there should be some grading of sentences according to the gravity of offences. If a man with a bad record were liable to receive the same sentence whether he were convicted of a minor larceny or of robbery with violence, there is a danger that he might more often commit the graver offence on the principle that it is better to be hanged for a sheep than a lamb. We think, however, it is possible, while giving due weight to the importance of the principle behind the present gradation of sentences, to make certain amendments of the law to enable the Courts to deal more effectively with persistent offenders. Already there are certain elements in our penal system which reflect, in more or less degree, the principle of relating the sentence to the offender rather than to the offence. In the use of the Borstal sentence for young people, in the use of Reformatory and Industrial Schools for children and in the use of the Probation Act for numerous classes of offenders, the Courts have increasingly shown that they are anxious to find the treatment appropriate to the offender and not merely to assess the penalty appropriate to the crime. In the case of adult offenders of criminal habits, however, the only piece of machinery which can be said, in a partial degree, to embody the foregoing principle, is the system of preventive detention contained in Part II of the Prevention of Crime Act, 1908.

25. We believe that the Judicial Authorities would welcome an extension of their powers to enable them in suitable cases, and subject to proper safeguards, not merely to order a term of imprisonment of such length as is warranted by the facts of the particular offence, but instead to order detention of such character and length as seems to be requisite either for the training of the offender or for the protection of society.

CHAPTER IV.

The Prevention of Crime Act, 1908.

26. That persistent offenders cannot be effectively dealt with by sentences imposed for their specific offences was recognised by the Gladstone Committee on Prisons as long ago as 1895. "To punish them for the particular offences in which they are detected is almost useless," said this Committee, and they recommended that "a new form of sentence should be placed at the disposal of the Judges by which these offenders might be segregated for long periods of detention during which they would not be treated with the severity of first class hard labour or penal servitude, but would be forced to work under less onerous conditions".

27. In the period between this Report and the date when effect was given to this recommendation by Part II of the Prevention of Crime Act, 1908, special attention had also been directed to the need for a better method than imprisonment of dealing with young people starting on careers of crime, and the Act of 1908 introduced two new forms of sentence, namely, Borstal Detention for young people and Preventive Detention for habitual offenders.

The Borstal Sentence.

28. Part I of the Act (as amended by the Criminal Justice Administration Act, 1914) empowers Courts of Assize and Quarter Sessions (in Scotland, the High Court of Justiciary and Sheriff Courts) when dealing with an offender between the ages of 16 and 21, in lieu of sentencing him to imprisonment or penal servitude, to sentence him to Borstal detention, and empowers Courts of Summary Jurisdiction in England on the conviction of such an offender to commit him to the higher Court with a view to such a sentence being passed. In pursuance of these powers a young offender may be subjected to detention for two or three years if "by reason of his criminal habits or tendencies or association with persons of bad character it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime".

29. In virtue of this statutory provision a Borstal sentence, though it has a punitive character, is regarded not as a mere measure of retribution but as a method of training and reformation, and the main consideration which guides a Court when deciding whether to pass such a sentence, is not the nature of the offence, but the character of the offender. There must be proof of an offence punishable by imprisonment before a Borstal sentence can be

passed, but otherwise the nature of the offence is only important as one of the items of information which enable the Court to appraise the character of the offender. No question arises of adjusting the length of the sentence to the gravity of the offence. If an offender by reason of his criminal habits or tendencies appears to a Court to need a period of training and discipline, he may be sentenced to Borstal detention for a period of two or three years, although the particular offence of which he is convicted may be such as would not warrant imprisonment for more than a few months.

30. Increasing use has been made of the Borstal sentence. In 1925 over 528 youths and girls in England and Wales were committed for Borstal training; in 1930 the number was 774. In Scotland the figures were 118 and 156 respectively.

31. Those sentenced to Borstal detention are some of the worst characters among the offenders between the ages of 16 and 21 who come before the Courts. An offender is only sentenced to Borstal detention if, in addition to being convicted of a specific offence, he is shown to be of criminal habits and tendencies. Despite the difficult character of the material, the training is, we understand, successful in a large proportion of these cases. The Borstal Association in England and the Central After-Care Council in Scotland keep after-care records of each inmate for three years after his release, and those records show that between 60 and 70 per cent. have not been re-convicted within that period. Of the remainder a substantial number are re-convicted once but do not become habitual offenders. Others revert to careers of crime. These failures of the Borstal system appear again and again in the Courts and come under public notice, but their number is small compared with thousands of ex-Borstallers who are living quiet and honest lives which never attract attention. If increasing use continues to be made of the Borstal system, the result in the future should be that while the total number of adult criminals is smaller, a very large proportion of these criminals will have passed through the Borstal Institutions.

The Preventive Detention Sentence.

32. Of Part II of the Act of 1908 which deals with the detention of " habitual criminals " little use has been made. During recent years less than forty persons have been dealt with each year under its provisions (see Appendix 3), while in Scotland it is now practically a dead letter. In Scotland no sentence of preventive detention was imposed during the year 1930.

33. This part of the Act provides that if a person with three previous convictions of crime is again convicted of crime and sentenced to Penal Servitude, and is found by a jury to be a " habitual criminal " the Court may for the protection of society pass a further

sentence of Preventive Detention for not less than five and not more than ten years. This sentence is to be served under less rigorous conditions than the conditions of Penal Servitude. (We give in Chapter XIII an account of present day conditions.) A person serving a Preventive Detention sentence is eligible for release on licence before the expiration of the term of detention; and if that term is five years he is usually licensed after about three and a half years. If, therefore, he gets the minimum sentence of three years' Penal Servitude—which can be reduced by good conduct and industry to two and a quarter years—and the minimum sentence of five years' Preventive Detention, his total term will probably be about five and three-quarter years.

34. As was explained in the Home Office memorandum laid before Parliament in 1911 (reprinted in Appendix 4), Preventive Detention is a sentence intended for "professional" criminals or criminals who definitely give themselves up to a career of serious crime. The sentence can only be imposed if the offender in addition to being convicted of habitual criminality is convicted of a specific offence sufficiently grave to warrant a sentence of penal servitude: and in England an offender cannot be indicted as an "habitual criminal" with a view to a sentence of preventive detention except with the consent of the Director of Public Prosecutions. For the purpose of guiding Police Authorities as to the cases which might properly be submitted to the Director, the Home Office issued a circular in 1911 (see Appendix 5) which advises that proceedings under Part II of the Act should not be taken "save in exceptional cases unless the offender (*a*) be over the age of 30, and (*b*) has already undergone at least one sentence of Penal Servitude and (*c*) is charged with a substantial and serious crime". The practice in Scotland has been similar.

35. Although we think that for the protection of the public, comparatively long sentences of detention are required for certain classes of offenders, detention for a period of five years or more is only justifiable in cases where nothing less is adequate, and there are many persistent offenders for whom such a sentence would be excessive. For offenders who are still in the early stages of a criminal career—including the large number of such offenders who are between the ages of 21 and 30—a shorter period of detention might often be effective. In any case Courts would rightly hesitate to impose so long a sentence on such offenders until some lesser sentence had been tried.

Accordingly, before examining the question of prolonged periods of detention we think it is our preliminary duty to consider what should be the method of dealing with those persistent offenders for whom such long sentences are inappropriate.

CHAPTER V.

Sentences of Detention for from Two to Four Years.

36. Our proposals are based on the following general principles. First, that sentences passed on persistent offenders should be related not merely to the facts of the specific offence, but to the character of the offender and to the necessity of subjecting him to such period of detention as is requisite either for his training or discipline or for the protection of the public; secondly, that such sentences should be served under conditions designed, so far as practicable, to fit the offender to take up life on release under normal conditions; and thirdly, that the sentence should entail a prospect of release on licence as soon as there is a reasonable probability that detention has effected its object and that the offender will abstain from crime. These general principles are not new. They form the basis of the Prevention of Crime Act, 1908, but the Act is so framed that it has only been possible to give full effect to them as regards offenders under the age of 21.

37. Consideration of the whole range of a persistent offender's career and of the various types of persistent offenders shows that there is an illogical gap between Part I of the Act of 1908 which provides for Borstal detention and Part II which provides for preventive detention. If an offender is under 21 and appears to a Court to be of criminal habits or tendencies he can be given Borstal training; if he is a "habitual criminal" he can be sent to preventive detention; but the great majority of persistent offenders do not fall into either of these groups. As stated above, it is not the practice (save in exceptional circumstances) to indict an offender as a "habitual criminal" unless he is over 30 and has already served at least one sentence of penal servitude. For the many persistent offenders who are between the ages of 21 and 30 and for the many persistent offenders over the age of 30 whom it would be undesirable or impracticable to indict as "habitual criminals", no special provision is available, and they can only be dealt with by sentences of imprisonment or penal servitude for the particular offences of which they happen to be convicted.

38. It is particularly important to make proper provision for persistent offenders between the ages of 21 and 30. Statistics show that a large amount of crime is committed by persons between those ages. The total number of persons convicted of indictable offences in 1930 is divisible into the following age groups:—

Under 16 years	11,995	or 21 per cent.
Between 16 and 21 years	11,929	or 21 per cent.
Between 21 and 30 years	13,989	or 25 per cent.
30 years and over	18,853	or 33 per cent.
Total	56,766	100 per cent.

The Prison Statistics also show that out of 15,712 receptions in prisons in 1930 for indictable offences, 5,724 (or 30 per cent.) were receptions of persons between 21 and 30. The figures for Scotland are similar.

39. Measures for preventing persistence in crime are obviously more likely to be effective in the early than in the later stages of an offender's career, and it appears to us that there ought to be provisions enabling a Court on the conviction of an offender who is over 21, but still in the early stages of a criminal career, to deal with him not merely by inflicting such penalty as is commensurate with his last offence, but by subjecting him to such treatment as is appropriate to his character.

40. For the purpose of enabling the Courts to deal more effectively (*a*) with those persistent offenders who are likely to profit by a period of training, and (*b*) with others whose detention is necessary for the protection of the public, we recommend that a new form of sentence should be introduced and that Courts should be given power, as an alternative to their present powers of ordering imprisonment or penal servitude, to order, in suitable cases and subject to proper safeguards, detention for any period being not less than two nor more than four years with the object, not of imposing a specific penalty for a specific offence, but of subjecting the offender to such training, discipline, treatment or control as will be calculated to check his criminal propensities. Such a sentence inasmuch as it involves loss of liberty will have a punitive character and a deterrent effect, but the primary objects of the sentence will not be punishment or deterrence. For some types of offenders—particularly those between 21 and 30—the object of detention will be reformative training: for others—particularly those whose criminality appears to be mainly determined by mental inertia and other innate negative qualities—little in the way of positive training may be practicable, and the main object may be to provide for the control of the offender and for the protection of the public; but in all cases the objects of detention should be remedial and custodial rather than penal, and it should be made the duty of the Court in deciding on such a sentence to pay regard, not merely to the facts of the specific offence, but to the history, character, and circumstances of the offender.

41. The provisions governing the operation of the proposed sentence might be modelled generally on the provisions relating to a Borstal sentence, and we make the following recommendations:—

(*a*) Power to pass a sentence of detention should be given in England only to Courts of Assize and Courts of Quarter Sessions and in Scotland to the High Court of Justiciary and Sheriff Courts. In England there should be provisions similar to those in Section 10 of the Criminal Justice Administration Act, 1914, enabling a Court of Summary Jurisdiction after convicting an offender to commit him

to Assizes or Quarter Sessions for a sentence of detention. There should also be a provision, which might be extended to Borstal cases, that when a person after summary conviction is committed to Assizes or Quarter Sessions for a sentence of detention he may be admitted to bail, and that while on bail he should submit himself to medical examination for the purpose of enabling a report to be made to the Court as to his fitness for detention.

(*b*) The sentence of detention should be for a period of not less than two nor more than four years, and should only be applicable to a person convicted of an offence which is punishable on indictment with imprisonment for at least two years or with penal servitude. When a person is convicted of such an offence, it should be open to the Court in lieu of sentencing him to imprisonment or penal servitude to sentence him to detention if it appears to the Court that by reason of his criminal habits or tendencies his detention is expedient for the prevention of crime.

(*c*) Before a sentence of detention is passed, full information should be before the Court not only as to an offender's criminal record, but as to his general history, character, and manner of life.

The Prison Authorities should be required by statute to submit to the Court a statement containing a report from the Prison Medical Officer as to the physical and mental condition of the offender, such information as the Prison Authorities can collect as to his history and circumstances, their general observations as to the suitability of the offender for a sentence of detention, the type of establishment which may be available for him and any view they may wish to express as to the length of time which in their opinion is required for his training. The Court should, of course, have entire discretion to decide whether any sentence of detention shall be passed and, if so, whether it shall be for two years or for four years or for some intermediate period; but the Court ought to know of any view the Prison Authorities have formed as a result of observation of the offender while in prison and of their experience in dealing with other cases.

The Home Office, and in Scotland the Scottish Office, should, by means of circulars and memoranda, keep the Judicial Authorities informed of the types of Detention Establishments available and of the classes of offenders received in such establishments, etc.

(*d*) There should be special provision for the release on licence of persons sentenced to detention. We deal with this matter in Chapter VIII.

CHAPTER VI.

Sentences of Prolonged Detention.

42. The proposed new sentence of detention for periods of from two to four years will not remove the need for a sentence involving longer terms of detention. There is a class of habitual criminal for whom detention for such periods is inadequate either because of the serious nature of their crimes or because sentences for such periods have already proved ineffective.

We have in mind particularly the " professional " criminals who deliberately make a living by preying on the public. Danger from this class of criminals lies not merely in the offences which they commit, but also in the contamination of other—particularly younger—men. Sir Archibald Bodkin, who was Director of Public Prosecutions from 1920 to 1930, said " How often one finds two or more men charged together one of whom is an old persistent offender and the others more or less novices."

Among the criminals against whom the community ought to be adequately protected are those who practise thefts or frauds on a comparatively small scale,—the victims being usually poor people on whom the loss of a small sum may inflict a more serious injury than the loss of valuable property on persons of means.

There are also certain sexual offenders for whom a long term of detention is necessary, particularly those who commit repeated offences against children or young people and those who corrupt boys.

43. These classes of offenders include, no doubt, some who are suitable subjects—in the first instance at any rate—for detention for two to four years; no fixed and fast line can be drawn between the types of offenders for whom the shorter sentences are appropriate and the types for whom longer sentences are necessary. We hope that if the methods of dealing with offenders in the early stages of criminality are improved, there will be fewer for whom prolonged terms of detention will be needed.

44. We think that some further reduction in the number of offenders for whom prolonged detention is required might be effected by a system of warning. Judges would warn offenders who are becoming eligible for a sentence of prolonged detention that on the occasion of their next appearance before the Courts they may find themselves being sentenced to detention for a lengthened period of years. Offenders so warned might be served on discharge with a suitable notice reminding them of the warning and the warning could be brought to the attention of the prosecution and of the Court on the occasion of a subsequent charge. Some offenders might

be induced by some such stern warning to pause before continuing further in their criminal career.

45. It is, however, clearly desirable that Courts should have the power of imposing prolonged sentences of detention for the protection of the public on certain types of persistent offenders for whom a shorter sentence is inadequate. Experience has shown that Part II of the Prevention of Crime Act, 1908, has failed to provide the necessary machinery for this purpose, and we recommend that Part II of the Act should be repealed and in its place there should be provisions empowering a Court of Trial (in England Assizes or Quarter Sessions, in Scotland the High Court of Justiciary) when dealing with a persistent offender, to impose, in lieu of a sentence of imprisonment or penal servitude, a sentence of detention for such period as the Court may determine, being not less than five and not more than ten years, if the Court is of opinion that the offender is of such criminal habits and mode of life that his detention for a lengthened period of years is expedient for the protection of the public. This power should only be exercisable when the offender is convicted of a serious crime and has been at least thrice previously convicted of crime, and " crime " should be defined for the purpose of these provisions in the manner indicated in paragraph 49 below. Under such a scheme it will be open to the Court, when dealing with an offender on his fourth or later conviction of crime, either to sentence him to imprisonment or penal servitude for his specific offence, or to sentence him to a prolonged period of detention because of his criminal habits and mode of life.

46. The objects of such prolonged detention—like the objects of the proposed sentence of from two to four years' detention—should be custodial or remedial. We discuss in later chapters the conditions under which sentences of detention should be served and the circumstances in which it should be possible for a person sentenced to detention to secure release on licence before the expiration of his sentence.

47. The question whether, when an offender is convicted of a fourth crime, the sentence shall be one of imprisonment or penal servitude, or shall be one of detention for five or more years, will be a question for the discretion of the Court, but the Courts will no doubt in many cases prefer a sentence of prolonged detention for several reasons :—

(1) The length of the sentence of detention will not be limited by the nature and facts of the specific offence. If the specific offence is such as to warrant only a comparatively short sentence of imprisonment or of penal servitude, but the habits of the offender are such that his prolonged detention is necessary for the protection of the public, it will be open to the Court to order such detention up to a limit of ten years.

(2) In some cases the Court, having regard to the fact that the offender is still comparatively young, or that he has intelligence, strength of character and potentialities for good, may feel that, though a long sentence is necessary, he is capable of profiting from a system of detention which involves training and which may result in his being licensed before the end of his sentence if a change in his character is effected.

(3) In other cases the Court may prefer a sentence of prolonged detention to a sentence of penal servitude because the offender is elderly, or is physically infirm, or is of feeble character or mentality. There are many such offenders who cannot be influenced either by reformative training or by deterrent punishment, and, though their prolonged detention is necessary both for the protection of the public and for their own care and control, the objects of such detention should be purely custodial.

48. It will follow from our proposals that there will be two distinct types of establishments for persons sentenced to detention. In one type of establishment will be those offenders whose age and character indicate that they are still susceptible of reformative treatment : in the other will be those who are less hopeful subjects for training but must be subjected to control in the public interest.

49. The provisions with regard to a sentence of five to ten years' detention might, we suggest, be to the effect that where a person is convicted on indictment of a crime and since attaining the age of sixteen years he has at least three times previously been convicted of a crime, the Court, if of opinion that the offender is of such criminal habits or mode of life that it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years, may, in lieu of any other sentence, pass a sentence of detention for a term of not less than five years and not more than ten years.

The term " crime " should include the offences covered by the definition of " crime " in the Prevention of Crimes Act, 1871, and the Prevention of Crime Act, 1908, namely :—

> " Any felony or the offence of uttering false or counterfeit coin, or of possessing counterfeit gold or silver coin, or the offence of obtaining goods or money by false pretences, or the offence of conspiracy to defraud, or any misdemeanour under the fifty-eighth section of the Larceny Act, 1861."

It should also include (i) attempts to commit " crimes " and (ii) certain sexual offences which do not fall within the present definition. If a persistent house-breaker is caught before accomplishing his object and is convicted of attempted house-breaking, his offence is a misdemeanour and not a felony, and it seems clear that the definition should be enlarged to cover such cases. Again, certain

serious sexual offences which may be committed against girls and boys are misdemeanours and not felonies. We give in Appendix 6 a list of sexual offences which should, we think, be brought within the definition of " crime."

The expression " crime " in Scots Law appears already to cover those various offences.

50. We have considered the general question of the indeterminate sentence, but we do not think it necessary to enter into a discussion of the general considerations for and against a sentence wholly indeterminate in length, because we feel that the scheme we have suggested will give powers as extensive as any Court would in practice wish to use. The sentences of detention which we propose are indeterminate in the sense that they will involve special provision for the release on licence of a person serving such a sentence if there is a reasonable probability that he will abstain from crime and lead a useful and industrious life. We discuss the questions relating to licensing in Chapter VIII.

CHAPTER VII.

The Treatment of Offenders Sentenced to Detention.

51. How will the conditions of a sentence of detention differ from the conditions of a sentence of imprisonment? Will the lot of an offender serving a period of detention be distinguishable from the lot of a prisoner?

We contemplate that different classes of offenders will be allocated to different Detention Establishments; that in some of these establishments, particularly in those in which the younger men or women are confined, more will be done in the way of training than is practicable in ordinary prisons; that in other establishments where there are persons unsuited for positive training, such modifications of the prison routine will be made as are now made for prisoners serving sentences of preventive detention; and that, if offenders of the dangerous or quite intractable type are sentenced to detention, they will either have to be transferred to a prison or be confined in some establishment where the conditions are very similar to those of prison. The Prison Commissioners should be free to allocate offenders sentenced to detention to such Detention Establishments as may be most suitable and to transfer offenders from one Detention Establishment to another. There should be powers similar to those relating to Borstal detention enabling the Secretary of State (*a*) to transfer to Detention Establishments persons sentenced to imprisonment or penal servitude and (*b*) in special cases to transfer to a prison an offender who may be found to be intractable in a Detention Establishment.

52. The main principles distinguishing Detention Establishments from prisons should be that the conditions in Detention Establishments will be less repressive than prison conditions, that for all such inmates as are mentally and physically vigorous the conditions will be more strenuous and that attempts will be made wherever practicable to approximate the conditions to those of normal life for which it is hoped to fit the offender.

53. In order to explain more fully what we regard as the advantages of the proposed scheme of Detention Establishments, it is necessary to refer to the main developments of prison administration during the present century.

54. For many years it has been the aim of the prison administration to emphasise in prisons, as well as in Borstal Institutions, the importance of methods of reformative treatment. In pursuance of this policy, many of the more humiliating features of imprisonment which contributed to the crushing of self-respect have been eliminated or modified, and prison conditions have been altered in

various ways with the object of giving the prisoner some social life and some opportunities for the exercise of responsibility. " Hard labour ", in the sense of the exaction of tasks which were designedly toilsome and imposed with punitive intent, ceased to exist thirty years ago. " Separate confinement ", which means the system of making the prisoner work in solitude in his cell for part of his sentence, has been abolished. All prisoners are employed on productive work in associated working parties. Selected prisoners are put into " honour " parties and trusted to work without constant supervision. " Star " prisoners, that is those who have not previously been convicted of serious crime and are not habitually criminal, are allowed to take their meals together. Educational classes are conducted by voluntary teachers in the evenings, and in certain Scottish prisons continuation classes are conducted by certified teachers under the Education Authorities. Physical training is given to those prisoners who are fit. Voluntary Visitors are appointed to come to the prisons and talk with the prisoners in their cells. The general object of these and other changes has been to stimulate the prisoner's better instincts and to induce such a frame of mind that he will be less likely on release to revert to anti-social activities.

55. The obvious evils of imprisonment are that it dulls the mind, deadens the sense of responsibility and power of initiative, and starves the social instincts; and, if these evils are to be diminished, it is necessary to create conditions in which the prisoner has some liberty of action and some kind of communal life. In most local prisons such conditions cannot be created except within narrow limits, because of the mixed and floating character of the population. The ordinary " local prison " receives all prisoners committed from the Courts in the district which the prison serves, including those on remand or awaiting trial, those committed by civil process for failure to pay sums of money, those committed in default of payment of fines and those sentenced for periods varying from a week to two years. In this mixed population are persons of all types and varying ages and of all degrees of criminality. To reduce the risks of contamination, arrangements are made to separate the young from the old and the better from the worse, but throughout such an establishment there must be a régime of restrictions and prohibitions designed to keep under proper control a population which includes many constantly changing elements, many unknown characters and some specially bad characters. In the administration of such an establishment the Prison Authorities are always faced with the dilemma that precautions which are needed to prevent opportunities for harm are liable to curtail opportunities for good. Moreover, in a prison containing persons of many grades of physical and mental capacity the pace of work is slowed down by the inferior workers, and it is impossible to maintain a high standard of effort and activity. The prisoner's life is

monotonous and irksome but is not strenuous. (The need for improving prison industries is a matter specially dealt with in Chapter IX.)

56. Because of these difficulties the Prison Commissioners have in recent years adopted the policy of setting aside special establishments for special classes of prisoners. Wormwood Scrubs Prison has been set aside for men convicted in London and surrounding districts who have not been in prison before. Wakefield Prison has been set aside as a training centre to which are sent prisoners selected from various local prisons in the Northern and Midland areas. The men selected for Wakefield are those who have sentences of nine months and over, are physically and mentally fit for training, and seem likely from their records and from their general character and mentality to respond to reformative treatment.

57. In these prisons where there are selected populations, a better pace can be set in the working parties and a better standard of work maintained, more prisoners can be allowed to work without continuous supervision, more association can be permitted at meals and for recreation, educational schemes can be more fully developed, voluntary helpers can be used more freely, and more use can be made of methods of discipline which invite the co-operation of the prisoners and create in the prison community a feeling that the privileges of all depend on the good behaviour of each.

58. At Wakefield most of the prisoners are not persistent offenders. There are some young men under 26 who have started on careers of crime, but the older prisoners are either serving a first sentence, or, if they are serving a subsequent sentence, have been selected for Wakefield because they are not of criminal habits. Although, therefore, the Wakefield scheme provides an illustration of the ways in which prison methods may be modified for a selected population, we do not suggest that the Wakefield methods would be generally applicable to all Detention Establishments.

59. Within the last few months a scheme has been started for setting aside a special prison for persistent offenders who are serving substantial sentences. Chelmsford Prison has been opened as a Training Centre for young men between the ages of 21 and 30 who have started on a criminal career, have previous convictions, and are sentenced either to imprisonment for a year or more, or to a first term of penal servitude. At a prison with such a population it will be necessary to have a regime of strict discipline and firm control, but we understand it is the intention of the Prison Commissioners that the Chelmsford regime shall differ from the ordinary prison regime in that the prisoners will have a longer and more active working day, plenty of physical training, systematic

evening education, and opportunities for recreation, including outdoor games—the general object being that life in this establishment shall be more strenuous and less monotonous than life in an ordinary prison.

60. The policy of setting aside certain establishments such as Wakefield and Chelmsford as Training Centres for special classes of offenders seems to us to be on right lines, but the policy is hampered by the fact that many offenders who would be suitable for training in such establishments cannot receive it because their sentences are too short. In law such Training Centres are merely prisons, and if the offender's specific offence does not warrant—say—more than six months' imprisonment, it is not open to a Court to impose a longer sentence for the purpose of giving him such a term of training as the Court may consider he needs.*

Our proposals for sentences of detention will facilitate the policy of setting aside special establishments for selected classes of offenders and will enable the Prison Authorities to develop the policy that so far as practicable the period for which the offender is committed to their custody should be utilised for his training.

61. In the development of this policy especial importance attaches to the methods of industrial employment and to the use of educational classes.

As all the inmates in detention establishments will be detained for substantial periods, it should be possible to make better arrangements for employment and for industrial training than are practicable in prisons where large numbers of inmates are confined for short periods only. In so far as these establishments are training institutions, their success will in large measure depend on the arrangements that can be made for rendering the inmates industrially efficient. We deal with the important subject of employment in Chapter IX. We also hope that it may be possible to arrange for offenders to earn by industry some monetary rewards. If offenders have at their disposal some earnings which could be either remitted to relatives or spent on extra comforts such as tobacco, papers, etc., such a scheme would provide an incentive for good work and bring the conditions of life under detention rather nearer to the conditions for which it is hoped to fit the offender on his release.

62. As regards education, we are favourably impressed by the results which have been achieved under the existing voluntary system. There is attached to each prison an Educational Adviser who is sometimes the local Director of Education. His function is to advise the Governor as to a suitable syllabus and to assist the Governor to obtain the services of volunteers who are willing to take

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* The legal principle is clearly explained in the judgment of the Court of Criminal Appeal in the case of Stanley Oxlade (13 Cr. App. R. 65).

evening classes. We feel, however, that in the proposed Detention Establishments it would be desirable to make the educational arrangements a more integral part of the general regime than they have hitherto been of the prison regime. In the Borstal Institutions education work is as much a part of the general routine as industrial work and we think it should be possible in some at least of the proposed Detention Establishments, especially those where the inmates are between 21 and 30, to introduce methods similar to the Borstal methods. We suggest for the consideration of the authorities that in such establishments the effort which an offender makes in educational work should, like the effort he makes in the workshop, be one of the considerations on which the earning of remission is dependent. We discuss in a later chapter the principles by which remission should be determined for persons sentenced to detention.

In connection with the development of educational methods, we would stress the desirability of correlating as far as possible the work done in the educational classes with the industrial occupations provided in prisons or Detention Establishments. Industrial training would be more effective and the interest of the prisoner would be stimulated if he were given the opportunity of acquiring in the educational class knowledge bearing on the theory and practice of the trade he is following in the workshop.

63. We also recommend that there should be in Detention Establishments officers having duties similar to those performed by Housemasters and Assistant Housemasters in the Borstal Institutions. In a Borstal Institution a Housemaster or Assistant Housemaster is responsible for a comparatively small group of inmates, each of whom he is expected to know individually, so that he will be able to superintend his training generally and to judge for what working party or educational class he is best fitted, and will be in a position to give advice as to his suitability for release on licence. In Detention Establishments where training schemes are developed there will be need for officers charged with similar functions. If such establishments are to be effective for the reformation of character, it will be essential that there should be responsible men superintending the training of comparatively small groups of inmates and capable of maintaining personal touch with the offenders under their charge.

64. It has been suggested to us also that the fact that there are no women on the staff of the male prisons, and that many men in male prisons seldom see a woman during the term of their imprisonment may be one of the factors which contribute to make their life so different from the realities of the outer world as to render them less fit to take up a social existence on release. We were impressed at our visit to the Boys' Prison at Wormwood Scrubs by the freedom with which the voluntary women workers interviewed the lads (see paragraph 121), and we understand that

in the Borstal Institutions the appointment of women as housematrons to superintend some of the domestic arrangements in the Institution has proved valuable. Their influence with the boys has been good. Whether it would be possible to appoint a woman to the staff of some of the proposed Detention Establishments in a whole or part-time capacity is a matter we recommend to the attention of the authorities. We are aware of the difficulties. Many of the inmates will be persons of specially bad character and difficult to control. At the same time we recognise that a proportion of the inmates of Borstal Institutions are 22 and 23 years of age, and if our recommendations are acted upon, some of the Detention Establishments will be occupied by young men of a similar age and character, and the presence of a woman on the staff might exercise a beneficial influence here as in the Borstal Institutions. Much depends on what arrangements can be made as time goes on for the classification of these new establishments, and the nature of the duties assigned to the woman; still more will depend upon her personality. But if our suggestion is found practicable we believe the experiment should be made. It seems to us that such a woman might be employed with advantage on various duties such as library work, educational work, some domestic duties and also on work connected with the collection of information about the history and home circumstances of offenders. It is the practice when a prisoner is received to get particulars about his employment and his family, so that arrangements can if necessary be made for communicating with or helping the family and that steps can be taken on the prisoner's release for giving him appropriate assistance. This "case" work will be of much importance in Detention Establishments and might well be done by women.

65. Part II of the Prevention of Crime Act, 1908, provides "that prisoners undergoing Preventive Detention shall be subjected to such disciplinary and reformative influences, and shall be employed on such work as may be best fitted to make them able and willing to earn an honest livelihood on discharge." The application of these principles to criminals of the type sentenced to preventive detention, viz., men who are past middle life and habituated to crime, has presented great difficulties (see Chapter XIII), but it should be less difficult to apply these provisions to persistent offenders who are in the early stages of a criminal career, and it should be the general policy of the administration to apply these principles as far as practicable to all Detention Establishments.

Accommodation for Persons sentenced to Detention.

66. As regards the accommodation to be provided for persons sentenced to detention, it would be an advantage that Detention Establishments should have land attached to them, so that the inmates could be employed on outdoor work, and we hope that in the future it may be possible to provide Detention Establishments where there will be better facilities for employment than exist in most

prisons. We have not, however, attempted to consider in detail what kind of accommodation would be most suitable for persons sentenced to detention because we recognise that, for some time at any rate, it will be impossible to embark on any schemes involving large expenditure, and it will be necessary to utilise existing buildings as detention establishments. In England we contemplate that some of the closed prisons will be used. In Scotland, where numbers will be relatively small, we consider that various forms of detention (except in the case of the untrainable prisoners) should if possible be carried on in one institution, rather than in wings of various ordinary prisons.

67. It should, however, be borne in mind that not all offenders are persons whom it is necessary for purposes of safe custody to confine in strongly built cells and within high boundary walls. Some Prison Authorities in the United States of America now take the view that, while for some prisoners "maximum security" structures are needed, there are others for whom "minimum security" conditions are sufficient, and that it is not necessary to incur the expense of providing fortress-like buildings for all prisoners. Accordingly, less expensive types of buildings are being used for selected classes of prisoners. The Scottish Prison authorities in the construction of the new prison at Edinburgh have shown that a prison need not be of the ponderous and expensive build characteristic of prisons constructed in the last century. In America many prisoners are employed on lumbering work or road-making and live in temporary camps, and we are informed that these prisoners seldom try to escape because they know that if they behave well in such camps they will earn early release, and that if they attempt to escape they are liable to be confined in a walled prison and to be there detained much longer than they would be detained in a camp. In this country it would no doubt be more difficult to find suitable places for such camps, but we should be glad to see an experiment of this kind tried. We were favourably impressed by the arrangements at Lowdham where Borstal boys have been living in huts while building the new Institution. The use of huts saves capital expenditure and also makes it possible to move prisoners from time to time to places where their labour is needed. Such a system would provide a method of finding suitable employment for offenders and of utilising their labour for work of national importance.

Under the scheme we have proposed it ought to be possible to select from the offenders sentenced to detention those who are most amenable to control, and to transfer them to a public works camp on the understanding that good behaviour and good work in such a camp would mean release on licence at a comparatively early date, and that anybody escaping from such a camp would on recapture be required to serve the whole or practically the whole of his sentence in some walled establishment.

CHAPTER VIII.

Release on Licence from Detention.

68. Under the existing law relating to Borstal detention and to preventive detention, the sentence is of indefinite duration subject to a fixed maximum. The Prison Commissioners can, after the expiration of six months (three months in the case of a girl), release the inmate of a Borstal Institution on licence under the supervision of the Borstal Association, if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life. The Home Secretary is empowered to release on licence at any time a prisoner undergoing preventive detention " if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life or that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him from confinement in prison ". The Borstal licensing system has worked well; but experience has shown that it is in most cases impossible to estimate with any accuracy whether an offender serving a sentence of preventive detention is or is not likely to abstain from crime if released. We have also had much evidence that this discretionary system of licensing is disliked and distrusted by the preventive detention prisoners and constitutes a major grievance. They often cannot understand why one is licensed early and another not so early; the decisions seem to them to be arbitrary, and they suspect favouritism.

69. On the other hand there are objections to a system of enabling offenders to earn automatically " by good conduct and industry " release on licence after a fixed proportion of the sentence has been served. In practice such a system means that an offender gets early release by avoiding overt misconduct or demonstrable idleness. Many criminals are well behaved in prison because it is more profitable to keep prison rules than to break them, and they are law-breakers outside because they find it easier to live dishonestly than honestly. Such people naturally prefer a system which enables them to earn release by consistent compliance with the prison routine and are dissatisfied if remission is made to depend upon other considerations. Their dissatisfaction, however, is not necessarily an argument against such a system.

70. It seems to us that the question how the date of release on licence should be determined—whether, that is, it should be determined by some automatic mark system or by some other method of judging conduct—must depend on the arrangements the Prison Authorities are able to make in the future for developing methods of

training and treatment which will test the offender's character and his capacity to make a right use of freedom. If in some Detention Establishments, where training schemes are developed, offenders can be given gradually increasing freedom from supervision and increasing opportunities to show trustworthiness—as is done in Borstal establishments—it should be practicable in such establishments to make release dependent not on an automatic system of marks, but on promotion through grades and on the judgment which is formed by experienced observers of an offender's character. On the other hand, in establishments where the conditions are similar to those which obtain in the present preventive detention establishment, we think an automatic system of earning release by marks for industry and good conduct would be preferable.

71. We recommend that, in connection with the proposed sentences of Detention for from two to four years or for from five to ten years power should be given to the Secretary of State :—

(*a*) to license offenders after they have served not less than three-quarters of their sentences if they have rendered themselves eligible for release by their conduct and behaviour while under detention, and

(*b*) to license an offender at any time after he has completed one-third of his sentence if satisfied that there is a reasonable probability that he will abstain from crime, that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him.

Our reason for suggesting that the power of licensing should not be exercisable until at least one-third of the sentence has been served, is that Courts might otherwise hesitate to sentence certain offenders to detention from a fear on the part of the Court that its estimate of the appropriate period of detention might be too easily interfered with.

The effect of our proposal will be that sentences of detention will differ from sentences of imprisonment or penal servitude in that detention sentences will entail the prospect of release on licence at any time after a third of the sentence has been completed if there is ground for thinking that detention has served its purpose and that there is a reasonable probability of the offender giving up his criminal habits.

72. We contemplate that just as there is at each local prison or Borstal establishment or convict prison a Visiting Committee or Board of Visitors, so there will be at each Detention Establishment a Board of Visitors consisting of unofficial persons appointed by the Secretary of State; and in all cases where the granting of a licence is determined by considerations involving the exercise of discretion, the advice of this Board should be invoked in the same way as the advice of Visiting Committees of Borstal Institutions is invoked as regards the licensing of Borstal inmates.

73. In addition to the power of discharging an offender on licence there should be a power to grant temporary release on parole, so as to enable the authorities in appropriate cases to allow an inmate in a Detention Establishment to go out temporarily. For example, if arrangements can be made for a man to be allowed towards the close of his sentence to go out to work while returning to the Detention Establishment each night, this might be a useful method of accustoming him to liberty and of testing his trustworthiness.

74. The main object of the licensing system should be to secure supervision and assistance for the purpose of enabling the offender to make a fresh start, and there should be provisions similar to those in Section 14 (3) of the Prevention of Crime Act, 1908, enabling a condition to be inserted in the licence that the offender shall be under the supervision of some approved Society or guardian who may be willing to look after him.

75. A Borstal inmate is subject to such supervision not only during the currency of his sentence but for a year after the expiration of his sentence. We think a similar provision would be valuable as regards persons sentenced to detention and we recommend that a licence should be operative during the currency of an offender's sentence and during twelve months subsequent to the expiration of the sentence.

During this period the offender should be liable if he fails to observe the conditions of his licence, to be recalled and detained for the unexpired period of his sentence or for a period of six months, whichever period is the longer.

76. Under the preventive detention system (as distinct from the penal servitude system) the time during which a prisoner has been absent from a prison under licence counts as though it had been served, and we propose that this system should be retained for sentences of Detention, but that if at the date when the licensee breaks the conditions of his licence there is less than six months of the sentence to run or if at that date the sentence, but not the supplementary period of supervision has expired, the licensee shall on recall be liable to detention for not more than six months.

After Care.

77. The arrangements for the re-instatement in industry of persons discharged from detention will obviously be of great importance to the success of the scheme. At present the work of assisting prisoners on discharge rests as regards persons discharged from the local prisons on a number of local aid societies which are voluntary bodies receiving a small Government grant, but dependent for most of their funds on charitable subscriptions. Arrangements for the after-care of persons discharged from Borstal detention and from

penal servitude and preventive detention rest on the Borstal Association and the Central Association for the Aid of Discharged Convicts respectively; and in Scotland on the Central After-Care Council. The administrative expenses of these associations are covered by Government Grant, but the Borstal Association depends to a considerable extent on voluntary subscriptions for the money required to help Borstal inmates between the date of their discharge and the date on which they begin to earn.

78. It will obviously be impossible to place on local Aid Societies the responsibility for persons discharged from Detention Establishments. Already the work of these Aid Societies has been rendered very difficult by the fact that prisons no longer serve a limited local area and that the specifically local character of each prison is therefore tending to disappear. In a Detention Establishment there will be offenders drawn from all parts of the country and returning to all parts of the country; and the arrangements for the after-care of such persons must be made by some central body utilising the services of numerous local agents.

The administrative expenses of such a body will inevitably be substantial and it would be impossible to rely on charitable subscriptions for this purpose. In England and Wales the necessary arrangements could no doubt be made by some reconstitution and enlargement of the two bodies—namely the Borstal Association and the Central Association for the Aid of Discharged Convicts, which are both under the directorship of Sir Wemyss Grant-Wilson. In Scotland the work could no doubt be undertaken by the recently constituted Scottish Central After-Care Council.

79. In connection with the subject of After-Care, it is desirable to draw attention to two points which have been brought to our notice in the course of our examination of the arrangements made for the after-care of men released from preventive detention. Some of the men, on release from preventive detention, have at their credit substantial sums of money which they have amassed by saving the money they can earn during a preventive detention sentence. In England the prisoner is given the money on discharge and the Central Association find that it is frequently impossible to help such men until they have spent this money. As is not surprising, when it is remembered that the man has been under strict restraint for many years, the money is frequently ill spent. This point should be borne in mind in connection with the consideration of any scheme for the payment of prisoners. Up to 1913 it was the practice to enable the prisoners serving sentences of over one month to earn gratuities by industry and good conduct, and the money was so frequently ill-used by prisoners on their discharge that the gratuity system was abolished and the money was used instead for grants to Aid Societies. In Scotland a preventive detention prisoner's earnings are

placed to his credit in the hands of the Central After-Care Council. There is much to be said for this system, but it has the disadvantage that the licence-holder is apt to suffer from a sense of grievance because he has not been given his earnings in cash on discharge and he may question the manner in which the Council disburses the money on his behalf. Experience in dealing with preventive detention prisoners therefore shows that a serious drawback still attaches to any gratuity system which enables a prisoner to amass substantial sums of money.

Secondly, it has been pointed out to us that much good could be done by arranging for some suitable person to give individual attention and friendship to a man discharged from preventive detention. The difficulty of finding a large number of individuals who would take on such tasks is obvious; but in dealing with these men, many of whom feel themselves to be social outcasts and easily take the view that it is useless for them to try to renounce their past, the personal touch is of great value. If it were possible to find suitable people each of whom would befriend and help one or two ex-prisoners, we believe that such personal relations would often provide the incentive and moral support which many of these ex-prisoners need if they are to make and maintain efforts to follow honest courses.

CHAPTER IX.

Industrial Training.

80. As already stated we attach great importance to the provision in Detention Establishments of suitable forms of employment.

We have received much evidence, including evidence from the Prison Commissioners, of the need for improving the arrangements for employing prisoners. Most of the people who come to prison repeatedly are indifferent workers, untrained and ill-fitted by temperament or habit for steady employment; and prison does little to remedy their industrial inefficiency. The kind of work a man learns to do in prison is seldom of much use outside, and he does not acquire in a prison workshop the habit of working with speed and concentration.

81. Some prisoners are employed in the domestic services of the prisons, such as cleaning, cooking, stoking and laundry work: some are employed by the Prison Surveyor's Department on work connected with the maintenance and alteration of prison buildings and the erection of new buildings, and the maintenance of the heating and lighting services: and the rest are employed in making articles required for prison use or for the use of other Government Departments. The largest of these manufacturing industries is the making and repairing of mail-bags for the General Post Office. Other industries include the making of brushes and mats for the Admiralty, War Office, Air Ministry, and Office of Works, the weaving of cloth for prison use on hand looms (or at Wakefield power looms), tinsmithing, basketmaking, twinemaking, tailoring, and bootmaking. At some prisons there are small carpentry shops, and there are certain special shops such as a foundry at Wakefield and a printing shop at Maidstone.

82. Some of the best work is provided by the Surveyor's Department. The construction of new buildings (including officers' houses), repairs, painting and the upkeep of the heating plant provide occupations on which prisoners work with interest and with profit to their industrial training. Most of the other industries, however, are of kinds which do not stimulate the worker's interest, call for little muscular exertion and are apt to be regarded by the prisoners rather as prison-invented tasks than as serious work. If a labouring man is employed for a long time on sewing mail-bags, he becomes "soft" and incapable of doing a day's labour on discharge. Governors frequently try to find for such men in the last weeks of their sentences outside jobs in the garden or in the coaling party to "tone them up", but there are not enough such jobs to go round.

83. The pace of a prison workshop is slow. A prisoner is, of course, subject to punishment if he is demonstrably idle, but he has nothing to gain by being specially industrious; and between the minimum which a man must do to escape punishment and the maximum which he could do if he tried his best the difference is great. Many prisoners are mental or physical weaklings, and the presence of one or two such men has a deleterious influence on a working party. Of two prisoners working side by side one may be capable owing to superior strength or aptitude of doing much more than the other, but to punish the former because his output is only equal to that of the latter creates obvious difficulties. Many instructors and supervising officers are remarkably successful in inducing prisoners to work with a will, but they are handicapped by their inability either to dismiss a poor worker or to reward a good worker.

84. The working day of prisoners is short. Until recently the aim of the prison administration was that prisoners should be employed in association for eight hours and should in addition do evening tasks in their cells, unless engaged on educational work; but the full eight hours of associated work were not reached in many prisons, and recently the hours of associated work have been reduced owing to staff reductions. The only way hitherto devised of effecting any material economy in prison expenditure is to reduce staff (by leaving unfilled vacancies caused by retirements), and a reduction of the staff available for supervision means that prisoners must spend longer hours in their cells.

85. In many prisons the workshop accommodation is inadequate and poor. In the last century when most of the prisons were built, no workshops were provided, the policy being that prisoners should work in their cells. For many years now it has been the policy gradually to build workshops as funds permit, but the workshop accommodation is still insufficient.

86. For many prisoners, especially prisoners serving fairly long terms, open air work would be advantageous, but at few prisons is such work practicable. The young prisoners are often employed on farm or garden work or on such other work in the grounds as can be provided, but at most prisons little space is available.

87. Our proposal for sentences of detention will facilitate the policy of gathering together into special establishments persons whose terms of detention are sufficiently long to enable them to be given industrial training, but this development will increase the need for providing better methods of employment.

88. Improvement of prison industries is a large and difficult subject which raises such questions as the following:—

(*a*) What types of employment are most suitable for prisoners or for offenders sentenced to detention? It is impossible to employ every prisoner at his own trade (including for example

miners and sailors), and the problem is to select employments which will be suitable for men who have followed varied occupations.

Is it possible to provide for men and women who are serving sentences of two or three years industrial training in certain specialised trades in which they can hope to find employment on release? At present most organised trades are closed to ex-prisoners, and any scheme of training prisoners for such trades might raise apprehension lest ex-prisoners should take places which are wanted by honest workmen. There is moreover, the problem of how to co-ordinate prison training with schemes of apprenticeship recognised by Trade Unions as qualifying for entry to a trade. This is a question on which the advice and co-operation of representatives of the Trade Unions should be sought.

(*b*) When a decision is reached as to the most suitable types of employment, how are the products to be disposed of? Are prisoners to be limited to the making of articles required for Government use or should it be permissible to sell prison products in the open market? If so, what safeguards are needed against unfair competition with private manufacturers?

At present the choice of prison industries is dominated by two considerations—(1) what orders for work can be obtained from Government Departments, and (2) among the orders so obtainable what types of work can be carried out in prisons without economic loss? The difficulties which follow from the second consideration are perhaps more important than those that follow from the first, as in Scotland (where a certain amount of work is done for the open market) prison industries seem to labour under similar difficulties to those experienced in England. Financial considerations forbid the undertaking in most prisons of work which involves expensive material or expensive machinery, such as might be spoilt by workers who are unskilled, careless and occasionally malicious. The effect of these limitations is that the work at present available is barely enough to keep all the prisoners occupied. From time to time mail-bag sewing such as could be done by sewing machines is done by hand so as to make it take longer to do.

(*c*) Can some better incentive to good work be given to prisoners or selected classes of prisoners? Can some method be devised of making the offender feel that his maintenance in prison depends, in part at any rate, on his own effort? Should they receive some payment? If so, how should the payment be reckoned and what will be the cost of such a scheme? A small scale experiment of a system of payment is described in the Annual Report of the Prison Commissioners for 1930. The experiment appears to be promising, but we

understand there are great difficulties in measuring many kinds of prison work, and in devising methods which will secure adjustment of reward to effort but will not involve inordinate clerical labour.

89. We do not feel that the members of this Committee have the knowledge or experience to enable them to investigate and make recommendations on this subject, and we do not gather from the terms of our reference that a detailed inquiry into these matters, which are largely technical, was expected of us. We accordingly confine ourselves to pointing out that for persistent offenders sentenced to detention the provision of suitable employment will be of great importance, and there is general agreement that the present arrangements for providing work for prisoners require improvement.

90. We would also suggest that the employment of persons sentenced to imprisonment or detention should not be considered in isolation as a problem of internal prison administration without reference to the prisoner's subsequent career as a free man, or to the organisations concerned with helping him. The problems of prison labour and of after-care have different origins and have developed along different channels. The first takes its rise in the administrative question of how to occupy as economically as possible persons under detention : the second represents the development of a time-honoured philanthropy which makes heavy calls upon wide human sympathy and personal services by voluntary workers. But in any consideration of the methods of employing prisoners the importance of fitting them for work outside must be borne in mind. We think that the time has now come to regard these allied problems of administration and philanthropy as a single problem of industrial training and re-settlement.

We note that the Home Secretary has already stated that on the receipt of our report he proposes to consider what is the proper procedure for a review of the present system of prison industries; and we suggest for his consideration that the allied problems of the employment of prisoners and of their re-absorption into the industrial system constitute a suitable subject for special inquiry.

CHAPTER X.

Special Considerations Affecting Women.

91. What we have said in our previous chapters applies generally to women as to men, but certain special considerations arise as regards women, the chief of them being that the number of women offenders is extremely small as compared with the number of men. At any one time there are in England and Wales less than 800 women in custody. In 1930 the figures were 45 serving sentences of penal servitude, 4 serving sentences of preventive detention, 116 under Borstal detention and 620 serving sentences of imprisonment. Of the women serving sentences of imprisonment, nearly 300 are in Holloway Prison, and in other prisons there are such small numbers as 30, 20, and even in one prison 9.

92. In the course of the year 1930, the receptions of women into English prisons on conviction of indictable offences numbered only 1,336. In addition there were 2,674 imprisonments for drunkenness and 1,448 imprisonments for other non-indictable offences.

The total receptions of women numbered 5,458, of whom 4,670 or 86 per cent. had been previously proved guilty of offences, as compared with 70 per cent. among the male prisoners. There were 2,244 receptions of women with over 20 previous convictions. The fact that the percentage of recidivism among women prisoners is higher than the percentage among men is obviously related to the fact that drunkenness accounts for 49 per cent. of the 5,458 receptions of women into prison, whereas drunkenness accounts for only 14 per cent. of the 33,541 receptions of men.

The corresponding figures for Scotland are given in Appendix 2.

93. The number of dangerous women criminals is negligible and the great majority of persistent women offenders are a nuisance rather than a menace to society. Thus in 1930, 66 per cent. of the receptions of women in prison were in respect of police court offences such as drunkenness, prostitution, offences against police regulations and the Poor Law. Or again, looking at the matter from the point of view of the sentences passed, of the 5,458 receptions of women in 1930, 2,781 were in default of payment of fines and only 883 were for periods of three months' imprisonment or over.

94. There were, however, 353 women between 21 and 30 sentenced to imprisonment for indictable offences and some of them would no doubt have benefited by a period of training under the sentence of two to four years' detention. There are also some women convicted of serious offences, for example, persistent thieves, false pretenders or professional abortionists, for whom prolonged detention would be useful.

95. Under present conditions, the training of women sentenced to imprisonment or penal servitude is carried on under serious handicaps, due to the small and mixed character of the female population in most women's prisons. Women prisoners sentenced to imprisonment and certain women convicts are now collected in nine local prisons; but in spite of this concentration the number of women in certain of those prisons is, as pointed out above, very small.

96. We do not, therefore, consider that women sentenced to detention should be added to the miscellaneous population of the existing women's prisons, where a large proportion of the inmates consists of " ins and outs ". Moreover, in the case of the great majority of women, prison buildings of the fortress type are unnecessary for purposes of security and the effect of such buildings on women seems to be in many respects worse than on men.

In these circumstances we recommend that in selected cases women sentenced to detention should be placed in a building of non-prison type. As a start, an old country house might be acquired for the purpose at a reasonable price. If numbers permitted, two or more institutions might be set up, which would allow of more effective classification and training. The experiment would start with the advantages that training in useful employments is easier with women than with men and that detention in an institution other than a prison would avoid the complete loss of self-respect which women frequently suffer as a result of imprisonment.

CHAPTER XI.

How Far can Persistent Offenders be Treated as Mental Patients?

97. The Committee recognise that the mental condition of the offender deserves the most careful attention in any consideration of the problem of persistent criminality. In the following chapter we review the question how far offenders should be subjected to care and control or to psychological treatment because they are not of normal mentality.

Existing Statutory Methods of dealing with Prisoners of Abnormal or Subnormal Mentality.

98. Until comparatively recent times the legal sanctions applicable to mentally abnormal prisoners were restricted to the provisions of the Criminal Lunatics Act, 1800, the Trial of Lunatics Act, 1883, and the Criminal Lunatics Act, 1884.

The Inebriates Act, 1898 and the Mental Deficiency Act, 1913 provided alternatives to imprisonment for offenders who, although not insane, presented certain mental abnormalities. Since then public opinion has been directed to the fact that a considerable amount of crime is associated with disordered states of mind. The subsequent history of the two Acts is pertinent to our inquiry.

Inebriety.

99. The Inebriates Act, 1898, related to two classes of criminal inebriates. In the first place to habitual drunkards who for the fourth time within twelve months had been convicted of any of certain scheduled offences connected with drunkenness; power being given to detain such cases for a term not exceeding three years, in any certified inebriate reformatory the managers of which were willing to receive him. Secondly, to persons convicted on indictment of an offence punishable with penal servitude or imprisonment, when the court was satisfied that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and when the jury found that the offender was an habitual drunkard. Such persons might be sent for a term not exceeding three years either to one of the certified reformatories, or to a State reformatory, and the committal to a reformatory might be either in addition to, or in substitution for, any other sentence. The Act received at first a considerable measure of legal, medical, and public support, but this was withdrawn ultimately for various reasons, and it became inoperative in 1921. The decrease in the total annual convictions for drunkenness

during recent years has brought about a corresponding diminution of the medical and other problems associated with this type of persistent petty offender. During our consideration of these matters we were confronted with opposing medical views in regard to the treatment of inebriety. We were told that psychological methods were frequently beneficial, and on the other hand that the results of this form of treatment were discouraging. In any case these measures can have little chance of success if the individual is free to indulge in his addiction. He requires also detention in an institution where exercise, suitable occupation and discipline can be regulated under medical supervision. But in penal cases financial difficulties will usually prevent this being carried out except in prison. We concur with the Report of the Liquor Licensing Commission (England and Wales) just published which expresses agreement with the view of the Home Office that little advantage stands to be gained by the revival of the special provisions relating to habitual drunkards in the Habitual Drunkards Act, 1879, the Inebriates Act, 1898, and certain sections of the Licensing Act, 1902. We believe that expert medical opinion in general also has arrived at the same conclusion.

Mental Deficiency.

100. The Mental Deficiency Act, 1913, empowers a court of competent jurisdiction to direct that a petition be presented to a judicial authority under the Act with a view to obtaining an order for the detention in an institution for defectives of any person convicted of any criminal offence punishable in an adult with penal servitude or imprisonment, if satisfied on medical evidence that such person is defective within the meaning of the Act; or itself make an order which shall have the like effect. The period of detention expires at the end of one year, unless continued in the interests of the subject and in the manner provided by the Act. The provisions prevent persistent crime in certain defectives with delinquent tendencies, and the segregation of non-delinquent defectives, also empowered by the Act, no doubt prevents others from committing a first offence.

101. It was suggested to us that legislation was urgently needed to empower local Education Authorities to notify to the Mental Deficiency Committees feebleminded children leaving Elementary Schools and needing care, supervision, and control for their own protection and for that of others. At present, under Section 2 (2) (*b*) of the Mental Deficiency Act, 1913, and Section 2 of the Mental Deficiency Act, 1927, they can only be notified if they leave Special Schools. We were informed that there are only some 16,000 children in Special Schools in the country out of the estimated 75,000 who could come under the Mental Deficiency Acts as feebleminded. Roughly, therefore, 60,000 feebleminded children are not, and cannot be, notified to Mental Deficiency

Committees. It seems probable that a large number of defectives coming before the criminal courts are drawn from this group, for, in most instances, they have left school without the provision of special after-care. It was proposed that, pending legislation, the local Education Authorities should make more use of their powers to provide home supervision for feebleminded children whilst in Elementary Schools, and we understand the Board of Education has suggested this in a circular. We call attention to this matter as, even without the provision of special education, much could be done to prevent the formation of criminal habits in these defectives if they were under constant friendly supervision whilst in school and after leaving school.

102. The Mental Deficiency Act, 1927, by reason of its more comprehensive conception of mental defectiveness, extended the protection of the 1913 Act to a still larger class in England. There can be little doubt that the same result would follow its application to Scotland. The support given generally to the two Acts is an indication of the public confidence in their power to deal with defectives including those who are potential persistent offenders.

103. According to Section 1 (2) of the Mental Deficiency Act, 1927, " mental defectiveness means a condition of arrested or incomplete development of mind existing before the age of eighteen years, whether arising from inherent causes or induced by disease or injury ". Certain medical witnesses considered this definition was too elastic, others proposed that the definition should be extended so as to include all incorrigible criminals. We believe the latter course to be undesirable as well as impracticable. The criminal tendencies, mental make-up, and outlook on life of the active aggressive criminal, who is a menace to society, may be very different from that of the persistent petty offender who is often little more than a nuisance. We do not consider that it would be in the public interest to permit the former class to qualify for preferential treatment and acquire the ameliorations of an institution for mental defectives by the repetition of serious crimes, and we have no reason to believe that the majority of petty recidivists would derive any permanent benefit by segregation among defectives. Indeed, to carry the proposal to its logical conclusion would deprive petty recidivists, as well as dangerous habitual criminals, of their liberty permanently, except in a few cases where the authorities responsible for their discharge were satisfied that the criminal tendencies of the subjects were no longer active.

104. The Mental Deficiency Acts, by withdrawing from prisons and Borstal Institutions a large number of social inefficients, have thrown into relief those offenders who are mentally subnormal or abnormal, but are not mentally defective or insane. In regard to these we are aware of the disadvantages of over-simplification in discussions on human conduct, but it is only necessary here to call attention in broad terms to the cases we have in mind. They

present a common feature : the tendency to repeat anti-social acts unless the underlying mental condition is relieved.

105. Experience indicates that as the conception of mental defectiveness becomes less exclusive a group remains on the borderline of the accepted standard of normality and invites inclusion within the defective class. If the definition of mental defectiveness is widened a certain number of the subnormal group will be included as defectives, but the standard of subnormality will tend to rise also. The subnormal group will not be eliminated, and the difficulties connected with the reformation of its delinquent members will continue. Criminal problems are closely connected with other social problems, and we believe that recidivism associated with mental subnormality or with inebriety must be dealt with empirically until social and medical sciences are more advanced than they are at present.

Types of Offenders who cannot be dealt with under existing Statutory Provisions, but who may be affected with minor mental abnormalities.

106. Allied on the one hand to the above cases, and on the other hand to those to which we shall next call attention, is a group of delinquents who become persistent offenders on account of emotional and temperamental instability. Many cases occur during adolescence, but some later in life. In adolescence particularly, the condition may be temporary, and perhaps not entirely or fundamentally psychological in origin, and may be relieved when manhood is attained, or earlier. Indeed, it seems probable that some unstable inmates of Borstal Institutions become stabilised and socially efficient during detention, not solely because the psychological difficulties are readjusted, but also because the physiological balance is regained. In many offenders, however, the anti-social conduct appears to be due essentially to psychological causes, and to be relieved sometimes by psycho-therapy.

107. It is sometimes suggested that sexual crime, in particular, is usually the result of an abnormal mental condition. Undoubtedly alcoholism, mental deficiency, insanity, and minor mental disorders are causal factors in many cases. But often the strength of the sexual urge, or the difficulty with which it is restrained, are important influences and fall within normal limits. Moreover, environmental, inherited, and economic factors operate in this as in other forms of crime.

108. There remain offenders who repeatedly commit the same type of crime which, from its nature or the manner in which it is committed, suggests an abnormal mental condition to be the essential causative factor. We allude particularly to some cases of indecency and certain other sex offences, to magpie thefts and some minor peculations, as well as to some cases of arson, violence,

and wilful damage to property. The cases can be recognised usually without difficulty if all the material facts connected with the crime and the history of the offender are first ascertained. As the punitive and reformatory measures generally adopted are not infrequently ineffective, the subjects remain a menace or a nuisance to the community.

Psychological Treatment.

109. There is a widespread impression that many crimes are symptoms or effects of some mental disorder and that the offender's criminal habits can be cured by appropriate psychological treatment. " It is our conviction " said the representatives of the Howard League, " that many persons to-day are sent to prison who stand in need only of medical or psychological treatment or supervision. . . . At present many persons are sent to prison for whom punitive treatment is as little justifiable and as little helpful as it would be for a sufferer from any recognised medical disease ".

The Committee, recognising the great importance of modern developments in the field of psychological medicine, have been at pains to investigate the question how far offenders should be treated as mental patients, and for this purpose have taken evidence from a number of experts who have specialised in methods of psychological examination and in psycho-therapy.

110. It is common knowledge that the motives underlying human conduct may be ascertained with comparative ease in some cases and only with the greatest difficulty in others. The diabetic delinquent may persistently steal food, or the means by which it can be obtained, in order to gratify the hunger of this disease. The unwanted child may react to the lack of parental understanding and retaliate with persistent anti-social conduct. The man who is overburdened with the feeling of his own inferiority may obtain a spurious sense of power, and mental compensation, if he hoards the proceeds of many thefts. In such cases the underlying psychological factor may be ascertained without difficulty, but there is reason to believe that sometimes it lies much deeper and requires expert methods for its detection and treatment.

111. The medical psychologist who sets out to treat abnormal conduct endeavours to ascertain the cause, and to obtain information in regard to any incident or circumstances in the past history of the subject which led up to the event. The subject may not be aware of the connection and the past incident or circumstances may be forgotten. But if the man reveals himself the underlying cause for his conduct may be discovered. He is then shown the reason why he acts in an anti-social manner so as to free him from past influences and enable him to start afresh. But realisation must come from the man himself. When he first unburdens himself he does not appreciate the significance of the various factors which have affected his conduct, and they must be presented to him

again in such a manner that a gradual understanding of their meaning is effected. If these matters can be dealt with he may be brought back to normality. But his co-operation is essential, and it is clear that a person who is addicted to some anti-social act may withhold this if he prefers to retain his abnormality rather than attain a cure which may deprive him of his means of gratification.

112. We understand that the technique used by different medical men in the psychological treatment of abnormal conduct varies within certain limits, and may be followed by ill-effects unless the practitioner has special skill and experience in this branch of medicine. But there appears to be general agreement that the probability of successful treatment is greater the sooner it is commenced and, in regard to the cases with which we are concerned, before criminal tendencies have become established as criminal habits.

One witness informed us that his results with adults were disappointing because of the difficulty of tracing the cause back to earlier years, but he considered that effective work could be done with children up to 14 years of age, and among adults in special cases. He regarded the adolescent period as a difficult one to treat since the individual then is self-sufficient and feels that he is master of his own fate; he fails to realise his own need and consequently is difficult of approach. Other witnesses emphasised the importance of treating cases as soon as possible, but considered that treatment might be successful up to thirty or forty years of age.

It may well be that some medical psychologists obtain their best results with children, others with adolescents and still others with adults.

113. No witness was able to give us any precise information concerning the curative value of psychological treatment in any large number of law-breakers, and the results on the whole have been inconclusive in the few convicted offenders who have been so treated during the currency of their sentences. We believe it is generally admitted that, although a large amount of psychological material and well-proved data have been collected by many workers in many countries, the practical treatment of psychological disorders by this means is as yet experimental and, although firmly established, still uncertain in its results. We consider it desirable to point out also that whereas the medical treatment of physical disorders may establish, as a rule, the fact of cure with reasonable certainty, no such claim can be made in individual cases of psychological disorder until proved by actual trial. It must be frankly recognised that some law-breakers who appear suitable for psychological treatment are not so in fact because of some medical, psychological, or psychotic contra-indication; others who appear suitable, fail to benefit by treatment; others are not known to be failures until they revert to crime when put to the test; and some are treated with success.

114. It was clear from the evidence of those witnesses who have had experience in the practice of psycho-therapy that even if it is practicable to select from the offenders appearing before the Courts those who appear to be suitable for psychological treatement, the need will still remain for subjecting to punishment those who fail to benefit by such treatment. " It seems to the offender ", said one witness, " not worth while being cured of a tendency which, however unpleasant to others, nevertheless affords pleasure to himself. Hence, he lacks incentive to co-operate in treatment or may even have an incentive not to do so. Hence, it is that the deterrent influence of punishment, either actual or threatened, proves so useful."

115. Moreover it was recognised that punishment is necessary not merely for the sake of deterring the particular offender, but for the sake of deterring others from following his example. One witness, himself a medical-psychologist, put the matter thus—" Psychologists tend to ignore the major social function of the penal system, but they should be reminded that the community is entitled to the first claim and the individual only to the second. The business of the psychologist is merely to point out methods that are just and that may be fruitful in the individual case, provided that such methods are compatible with the wider interests of society."

116. We do not agree with the view that crime is a disease, or that it is generally the result of mental disorder. We believe, however, that a certain amount of persistent crime—as well as first offences with which we are not concerned—is due to abnormal mental factors; that the usual punitive and reformative methods often fail in the cases which are outside the purview of the Lunacy and Mental Deficiency Acts; that there is reason to suppose that certain delinquents may be amenable to psychological treatment; that the application of this method of treatment in criminal cases is in its infancy and is likely to remain so for many years to come; that, probably, its scope is limited and may be mainly preventive, and applicable chiefly to children, juveniles and adolescents; that the time has arrived when selected cases should be placed voluntarily under psychological treatment; and that, in order to test thoroughly the value of the method, a systematic follow up of the cases dealt with in this manner should be conducted over a prolonged period; and the results, the failures as well as the successes, of accredited medical psychologists, should be published in due course. And further, if we accept the psychological explanation in certain cases of crime, we do not regard it necessarily as an excuse for the offence.

117. We do not consider that any special statutory provisions are necessary or even practicable at the present time to carry out this experiment. But we believe that if advantage is taken by Local Authorities of the powers conferred on them by the Mental Treatment Act, 1930, to admit voluntary patients to hospitals

approved by the Board of Control for the treatment of mental illness, or to provide outpatient clinics for the treatment of persons so suffering, a certain number of offenders might derive benefit by attending for treatment whilst on probation. We were informed that in a few districts clinics have been established which are independent of the Local Authority and are under skilled and unimpeachable direction, and that cases have been sent to some of them from courts of summary jurisdiction for medical treatment. We understand, however, that there are only a few hospitals or clinics throughout the country available for the purpose. We attach much importance to the principle that only treatment centres should be used which are set up by the Local Authorities, or which have otherwise established themselves in the confidence of the public and the medical profession. We believe that an adequate service of these clinics, and also child guidance clinics, might effect some reduction in the amount of certain forms of persistent crime.

118. It is quite impracticable, and we believe generally unnecessary to examine the mental condition of all adults who appear before a court on a criminal charge. But of course the mental condition of an offender may be an all-important consideration in deciding upon the appropriate method of dealing with him. We know that a large number of persons who have been proved to the satisfaction of the court to be guilty of the offence with which they are charged are remanded for examination into their mental condition, but we do not consider full advantage is taken always of the existing facilities for doing so. It is probable that only a small proportion of such cases will be found suitable for psychological treatment, but this consideration should not deter courts from remanding the offender if his family and personal history and the circumstances of the case suggest a psychological investigation is desirable. In districts where reputable clinics are established it may be possible for a court to obtain the advice of the medical officer attached to the clinic as to the value of psychotherapy in individual cases, without the necessity of remanding the offender in custody for the purpose.

119. The primary aim of psychological treatment in criminal subjects is to prevent them from committing crime in future, and it is accepted generally that the fear of imprisonment is often more deterrent than the actual fact. We do not believe that a decision can be made at the present time between the relative advantages of psychological treatment prior to, or during the currency of, imprisonment. Different factors are involved in individual cases. Doubtless many offenders earnestly desire to be relieved of their anti-social tendencies. In others, mental abnormality may co-exist with malingering, an offender may consciously exaggerate his disability, and as we have already pointed out, may refuse to accept the truth if it threatens to abolish his means of self-gratification. One medical witness considered the emotional reaction which

followed upon a sentence of imprisonment placed the subject in a favourable mental condition for psychological treatment. But it seems probable that emotional reactions of an opposite character may have the reverse effect. Perhaps the prospect of future imprisonment may be the physician's most powerful ally in some cases, a sentence of imprisonment in others.

120. The present economic conditions may delay the establishment of clinics, and many courts may hesitate to consider this method of dealing with delinquency until more is known of its value. Meanwhile, some progress might be made if offenders who were willing to be treated during a sentence of Borstal detention or imprisonment were selected and treated in one or more of the establishments under the administration of the Prison Commissioners. In this way the public would be protected no less than before, and the results could be analysed and the method tested when sufficient data had been collected.

121. For some time past the lads under 21 years of age who are received in the Boys' Prison at Wormwood Scrubs, sentenced to detention in a Borstal Institution or remanded from the Metropolitan and adjacent areas for a medical report have been psychologically examined by the medical officers of the Prison. A band of voluntary women workers also interview the lads in prison and whenever possible visit the homes, and report their findings to the medical staff. They act as field workers to a mental clinic. The medical examination detects mental defectiveness, major and minor mental disorders, and assesses the psychological conditions associated with the offence. The prison medical officer, however, is often prevented by his official position from establishing the relationship necessary for more detailed methods of psychotherapy. In consequence a few cases have been sent for treatment as outpatients to a mental clinic, but administrative and other considerations restrict the usefulness of this practice. If there were attached to one or more selected penal establishments a medical psychologist free from routine official duties, the triad usually recognised as essential to carry out this form of treatment would be established. The field worker would have her place, the prison medical officer —as in other prisons—would conduct the physical and mental examination and eliminate cases of mental defectiveness and gross mental disorder, and the medical psychologist would carry out further psychological investigations and the treatment in selected cases.

122. We should be on guard lest words are substituted for facts until the efficacy of treatment is based on scientific data. Meanwhile, we consider that action along these lines would determine whether the psychological treatment of delinquency is of sufficient value to justify statutory recognition as a means for the prevention and treatment of certain crimes. We therefore recommend that measures be taken to give effect to this suggestion.

CHAPTER XII.

The Abolition of the Legal Distinction Between Penal Servitude and Imprisonment.

123. If legislation is introduced to give effect to our proposals, we hope the opportunity will be taken to get rid of the distinction between Penal Servitude and Imprisonment. At present a sentence of penal servitude differs from a sentence of imprisonment in two respects only—(1) by reason of its length—a sentence of imprisonment cannot be for more than two years and a sentence of penal servitude cannot be for less than three years—and (2) by the fact that the remission which a prisoner earns by good conduct and industry is absolute under a sentence of imprisonment and is conditional under a sentence of penal servitude.

124. The reasons for the distinction between the two sentences are purely historical. Before the middle of the last century persons convicted of major offences were sentenced to transportation, and persons convicted of less serious offences to imprisonment in local gaols which were owned and managed by the local Justices. The arrangements for transportation were undertaken by the Central Government and when, as happened from time to time, it was impracticable to carry into effect sentences of transportation, it was necessary for the Central Government to make other arrangements for dealing with persons so sentenced. By 1850 a regular practice had grown up of confining persons sentenced to transportation in one of the special Government prisons at Millbank or Pentonville or in hulks or depots where they were employed, as far as possible, on public works, and then either given tickets of leave to be at large in a Colony, or when no Colony would receive them, discharged in this country. The Penal Servitude Act, 1853, regularised this system by substituting sentences of penal servitude for sentences of transportation and by allowing persons so sentenced to be released under conditional licences to be at large in this country. In the early days of the penal servitude system it was the practice to keep a convict for the first part of his sentence in separate confinement either in one of the Government prisons or in one of the local prisons, where the Government rented cells by arrangement with the local Justices, and afterwards to transfer him to some place where he could be employed on public works either in this country, for example, at Chatham or Portland, or elsewhere as at Gibraltar or Bermuda. Later, when public works were no longer available, it became necessary to employ convicts on such work as could be done in prison workshops or on land adjoining the prison.

125. Originally there was a considerable difference between the treatment of convicts and the treatment of local prisoners. The difference was due to two main causes. Until 1877 the two types of prisoners were under the control of different authorities—the convicts being under the control of a Government Department, namely the Directors of Convict Prisons, and the local prisoners being under the control of the local Justices. This difference disappeared when, in 1877, the Government took over the local prisons, placed them under the charge of Prison Commissioners and appointed the Chairman of the Directors of Convict Prisons to be also Chairman of the Prison Commissioners. By 1898 it had become the practice to appoint the same persons to be both Directors of Convict Prisons and Commissioners of Prisons, and the Prison Act of 1898 provided that the Prison Commissioners should by virtue of their office be Directors of Convict Prisons. The second cause of difference was that until 1895 persons serving sentences of imprisonment were subjected to strictly punitive conditions including separate confinement throughout their sentences, while persons serving sentences of penal servitude were subjected to a preliminary period of separate confinement and hard labour but subsequently were employed in association under conditions which were intended to be less punitive and more conducive to industrial training. This second distinction disappeared after the report of the Gladstone Committee of 1895 when the treatment of local prisoners was changed and it became the practice to employ them in association on productive work.

126. For many years now there has been no material difference between the conditions under which sentences of penal servitude and sentences of imprisonment are served. Of the three convict prisons in England, one, namely Maidstone, is a local prison taken over in 1877 from the Kent Justices. At this prison are the "Star" convicts, that is, men who have been convicted of one serious crime but are otherwise not of criminal character or careers, and they are all employed within the walls of the prison on occupations similar to those of local prisoners, except that these long term men can follow certain occupations such as printing and tinsmithing, which would be impracticable for short term prisoners. At Parkhurst where there are 650 convicts, most of whom have previous convictions, not more than 70 or 80 are employed at any one time on the land adjoining the prison, and the rest are employed in prison workshops. At Dartmoor where there are 440 recidivist convicts, about 70 are employed at any one time on work outside the walls, and the remainder in prison workshops. As far as practicable arrangements are made at Parkhurst and Dartmoor to give men who have been employed for a long time in the workshops a change to work outside, and it is a great advantage that for men serving long sentences there should be opportunities of outdoor work. As indicated in paragraph 86 it is desirable that more outdoor work should be provided for men serving long terms, but we wish to make it clear

that at the present time a sentence of penal servitude does not necessarily entail employment on outdoor work or on work outside prison walls. Many convicts are employed throughout their sentences under conditions similar to those under which prisoners sentenced to imprisonment are employed and most convicts are so employed for large parts of their sentences.

As regards women the small number sentenced to penal servitude were for many years in Liverpool Prison and are now in Holloway Prison. Their employments and general conditions are similar to those of women sentenced to imprisonment, with whom they work in association. The Star convicts have for some time been housed in Aylesbury Prison.

127. It is true that there are, and there should be, certain differences between the conditions under which long and short sentences are served respectively. For example, a long sentence prisoner can be employed on occupations which require long training and can be allowed to earn special privileges, but differences such as these are consequential on the length and not on the nature of the sentence. The use of the two terms " Imprisonment " and " Penal Servitude " is liable to suggest that there is a material difference between the nature of the two sentences, and the abolition of the term penal servitude would have the advantage of making it clear that a sentence of five years differs from a sentence of one year in length only or in such minor features as are incidental to length. We might perhaps also mention as one of the drawbacks of the present distinction that many convicts regard themselves as aristocrats in a prison community and look down on those who are sentenced merely to imprisonment.

128. If the term penal servitude were abolished there would then be only two designations, namely, Imprisonment and Detention to describe the two main types of sentence involving the segregation of offenders. The term Imprisonment would cover all ordinary sentences up to life sentences such as are now described by the terms of " Imprisonment " or " Penal Servitude " and aim primarily at measuring out a term for the offence and in that sense are retributive in character. The term " Detention " would cover all sentences which are of a tutelary character and are based on the character of the offender with the object either of subjecting him to reformative training or of detaining him in safe custody for the protection of the public. Of these tutelary sentences there will be, if our proposals are accepted, three types, namely, Borstal Detention, Detention for periods of two to four years and Prolonged Detention for five to ten years.

Should the Licensing System be Retained for Penal Servitude Convicts?

129. The abolition of the technical distinction between sentences of penal servitude and sentences of imprisonment would raise the question whether the present system of release on licence should

be retained for persons sentenced for the longer periods. At present a prisoner sentenced to imprisonment for any period over a month can by good conduct and industry earn a remission of his sentence not exceeding one sixth. This remission is absolute. As soon as the prisoner leaves the prison gate there is no further control over him. Under the penal servitude system a male prisoner can by good conduct and industry earn a remission of a quarter of his sentence and a female prisoner remission of a third of her sentence; but the remission is conditional only. The convict leaves prison under licence, and, if reconvicted during the period of the licence, is liable to serve the unexpired portion of his sentence, which is known as a remanet.

130. The liability to serve the remanet is a statutory consequence of a reconviction on indictment, and theoretically is independent of any sentence which the Court may pass for the new offence. It is, however, a common practice for a Court, in assessing the new sentence, to give weight to the consideration that the prisoner is also liable to serve a remanet.

We doubt whether the liability to serve the remanet has any material effect in restraining the ex-convict from crime during the period of his licence. If he is not deterred from crime by the liability of another sentence, the liability to serve his remanet as well as his new sentence is not likely to have much influence on his conduct.

131. There is, however, another important consideration. It is a condition of a convict's licence that he shall report his address to the police. The Home Office has power to remit this condition and the power is exercised in a proportion of cases. We have tried to ascertain what degree of value attaches to the requirement that an ex-convict shall report to the police. The value of such reports is considerably diminished at the present time by the increased facilities for locomotion. Some years ago if crimes of a certain type occurred in a particular neighbourhood, it was of considerable advantage to the police to know what ex-convicts were living in that neighbourhood. But to-day criminals can, and frequently do, practise their criminal activities in districts far removed from their homes. As one witness said to us "The housebreakers who live in Edinburgh usually practise in Glasgow, and those who live in Glasgow practise in Edinburgh." Motor-cars and motor-buses make it extremely easy for the criminal to move over large stretches of country swiftly. Although, therefore, we recognise that sometimes it is useful to the police to know an ex-convict's address, the advantages of requiring reports to the police are far less than they used to be.

132. As regards certain types of criminal, however, such, e.g., as professional abortionists or persons who practise coining or the forging of notes, it is extremely desirable that the police should know in what place they are residing after their release from prison.

133. The licensing system, however, does not provide a satisfactory method of securing police supervision. An ex-convict can only be required to report during the currency of his licence. Most penal servitude sentences are for three years only; consequently, if a convict earns full remission he is only required to keep the police informed of his address during the period of nine months. If by bad conduct in prison he loses the whole of his remission, he will have no licence, and consequently there will be no requirement that he should report to the police. In cases where reporting to the police is desirable, it seems to us that this object should be effected by some method other than a condition in the licence, and the Prevention of Crime Act, 1871, provides the necessary machinery. Section 8 provides that

> " where any person is convicted on indictment of a crime, and a previous conviction of a crime is proved against him, the Court . . . may in addition to any other punishment which it may award to him, direct that he is to be subject to the supervision of the police for a period of seven years, or such less period as the Court may direct, commencing immediately after the expiration of the sentence passed on him."

Very little use has been made of this provision of recent years, but this section provides the proper method of requiring reports to the police in any case where the Court may think such a requirement suitable, and it seems clear that in so far as reporting to the police may be desirable, the object should be secured by the use of this section and not by the licensing system.

134. We accordingly recommend that persons sentenced to penal servitude, or under our new terminology to imprisonment for three years or more, except persons sentenced for life, should be allowed to earn absolute remission of a portion of their sentences in the same way as persons sentenced to imprisonment. It is to be noted that the number of criminals subject to the licensing system is very small compared with those whose release from imprisonment involves absolute discharge. Out of the 39,000 receptions on conviction into prisons in England and Wales in 1930, only 529 were under sentences of penal servitude.

135. As to the maximum amount of remission which a prisoner should be enabled to earn, we think it desirable to keep the present maximum of one sixth for the shorter sentences (i.e. sentences up to two years), and the present maximum of one quarter for the longer sentences (sentences of three years and more). Prisoners serving sentences between two and three years in length would be allowed to earn remission amounting to something between a sixth and a quarter of their sentences, according to a special scale designed to ensure that there was an even grading of remission between two and three year sentences. We see no reason for maintaining the distinction that women may earn a third while men can only earn a quarter. This differentiation is a historical

survival due to the fact that before 1853 it was the practice to give women sentenced to transportation tickets of leave at an earlier date than men. There is nothing in present-day conditions to justify continuation of this illogical distinction.

136. It may be added that the abolition of the distinction between penal servitude and imprisonment would have the advantage of widening the powers of the Courts by enabling them to impose sentences for periods of more than two and less than three years. At present Courts cannot impose a sentence of two and a half years. The sentence must either be one of imprisonment for not more than two years or one of penal servitude for not less than three years.

CHAPTER XIII.

The Conditions under which Sentences of Preventive Detention are Served.

137. At the time when the Act of 1908 was passed, it was contemplated that sentences of preventive detention would be passed on a substantial number of offenders who had three or more previous convictions for crime, and that the new provisions would have an appreciable effect on recidivism.

Between the date when the Act came into operation in August, 1909, and the 31st December, 1930, 967 sentences of preventive detention have been passed in England and Wales. In the last ten years the total is 364, giving an average of 36 cases a year. As is shown in the Annual Report of the Prison Commissioners for 1928, these figures are insignificant compared with the number of criminals who are known to have three or more previous convictions for crime. The reasons why greater use has not been made of preventive detention are discussed in the next chapter.

Of recent years the daily average number of prisoners serving this sentence has been about 120 males and two or three women. None of them is young, half of them are over 50 years of age and nearly a fifth are over 60.

138. With few exceptions they are men with little mental capacity or strength of character. Some of them may be skilled in the arts of forgery or false pretences, many are cunning, and most of them have a strong belief in their own cleverness, but generally they are of the type whose frequent convictions testify as much to their clumsiness as to their persistence in crime.

139. Until the end of last year the men were confined at Camp Hill in the Isle of Wight in an establishment which was specially built for preventive detention prisoners between 1908 and 1911. Camp Hill has now been appropriated as a Borstal Institution and the men have been transferred to Lewes Prison. The two or three women are at Aylesbury.

140. In Scotland little use has been made of preventive detention and there are at present only three or four preventive detention prisoners—all men (see Appendix 3). They are detained in a part of Peterhead convict prison built for preventive detention prisoners. When there have been any women undergoing preventive detention they have been placed in Glasgow (Duke Street) Prison.

141. In pursuance of the provision in the Act that their treatment shall be less rigorous than the treatment for penal servitude convicts, special Rules have been made for preventive detention.

Under these Rules a preventive detention prisoner can earn various privileges which the penal servitude convict does not normally enjoy. Thus he can earn a money credit for work done, and is allowed to employ this in various ways, including the purchase at the prison of certain commodities in the nature of luxuries. He has opportunities for association with other preventive detention prisoners, not only during working hours but also at meal times and in the evenings. During the periods of recreation the men can smoke and talk and play table games. They have greater facilities than a convict has for reading newspapers and other periodical publications, for writing and receiving letters, and for receiving visits. There are two other distinguishing features of preventive detention which are to prisoners of great importance. The preventive detention prisoner receives a more varied and liberal diet than other prisoners, and he has also greater freedom from detailed supervision than the average local or convict prisoner. In the arrangements made to ameliorate the lot of these prisoners all that is reasonably practicable seems to have been done.

142. We cannot report that success has been achieved by the steps taken to comply with the provision that persons undergoing preventive detention " shall be subjected to such disciplinary and reformative influences and shall be employed on such work as may be best fitted to make them able and willing to earn an honest livelihood on discharge." When in 1911 the first batch of persons sentenced to preventive detention had completed their penal servitude sentences and were transferred to Camp Hill, the Prison Authorities of that date were at pains to devise a system which should conduce to the reformation of these men. The officers detailed for the new establishment were all specially selected; and a regime was introduced for enabling the prisoners to earn by good conduct and industry promotion through a series of grades. Each promotion is rewarded by increased privileges including an increased earning rate. Those who misbehave are liable to be placed in the " penal grade " where they lose the privileges of associated recreation, of smoking, of earning money to buy extra comforts, etc. It was hoped that the method of earning promotion and the increased freedom from supervision granted to men who reach the higher grades, combined with the prospect of qualifying for an early licence, would have a reformative effect on the characters of the prisoners. The system undoubtedly conduces to good conduct, or rather to the absence of bad conduct in prison, but it has little effect on the characters of the men. Compliance with prison routine is no evidence of a change of attitude or of any reform of character. It is common to find that the men who persistently revert to crime when at liberty are well behaved while in prison. Discipline among the preventive detention men is usually maintained without difficulty and misconduct is rare, but all save a small proportion of these men are reconvicted after brief intervals of liberty.

143. In the last ten years the Prison Commissioners have introduced into most prisons methods of reformative treatment such as are described in Chapter VII, but in developing these methods their policy has been to give attention first to the younger prisoners and to those who are novices in crime, and they have not attempted hitherto to extend these methods to prisoners undergoing preventive detention. There has been no attempt to utilise for preventive detention prisoners the services of voluntary teachers or of voluntary visitors. We realise the difficulty of using voluntary helpers for the type of men serving sentences of preventive detention, and we also recognise that it was right in the development of the policy of enlisting voluntary assistance to begin with the more promising elements of the prison population, but we think efforts ought now to be made to apply to preventive detention prisoners methods which have proved valuable in other prisons. Most of the men have few visits or letters; many of them have completely lost touch with their families and have no friends. If voluntary visitors of the right type could be found for these men their influence might, we think, be beneficial. The great defect of the preventive detention system is that, while the life of a preventive detention prisoner is more comfortable and less irksome than the life of a penal servitude man, it is an empty life. There is little to stimulate interest or mental activity.

144. As regards employment, our criticisms of prison industries (see Chapter IX) apply to preventive detention prisoners as to others. In a preventive detention establishment the difficulties are increased by the fact that many of the prisoners are medically unfit for strenuous work. At Camp Hill a considerable number of the stronger men were employed on outdoor work on the land adjoining the institution. Now that they have been moved to Lewes some are employed in the prison grounds (there is a considerable area of open ground within the walls of this prison) and others are employed in basket making and other prison occupations such as are described in Chapter IX. Whether it is possible to train for industrial employment on release men of the age and character now undergoing preventive detention is doubtful, but we hope that the problem presented by these prisoners will receive special attention in any review such as we suggest of the general subject of prison industries. At present these prisoners are credited with small earnings provided they are not demonstrably idle. We know the difficulty of applying any piece-work system in an establishment where many men are employed in cleaning, cooking and other domestic services of the prison, but it would clearly be advantageous if some system could be devised for providing an incentive to industry by making a man's earnings and privileges dependent in some way on the degree of his effort.

145. At present preventive detention is only applied to a few criminals who are mostly past middle life and of the almost incorrigible type. Under the scheme we propose the sentence of

prolonged detention for five to ten years will be available and will no doubt be used for a larger number of criminals, including some younger men who will be more susceptible of training. If in the future younger and more vigorous men are sentenced to prolonged detention, it will be important that in one or more detention establishments there shall be developed a system of more strenuous work and of better industrial training than has been provided for persons undergoing preventive detention.

146. The Act provides that the Secretary of State may " at any time discharge on licence a person undergoing preventive detention if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life or that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him from confinement in prison."

147. The practice is in comparatively hopeful cases where the sentence is five years to grant a licence usually after three and a half years, in less hopeful cases after four and a half years and in some apparently hopeless cases to grant no licence. When the sentence is six years, a licence is usually granted in comparatively hopeful cases after four years, and when the sentence is ten years after seven years. For the purpose of assisting the Home Office in deciding when to licence these prisoners, there are at the Preventive Detention establishments at Lewes and Aylesbury Advisory Committees, whose members are not officials but are selected by the Secretary of State from local residents and other persons willing to render public service. The members of these Committees interview the inmates, make themselves acquainted with their careers and characters, and after consultation with the Governor and Chaplain, do their best to estimate the probability of an offender's abstaining from crime if released on licence. The difficulty, however, of making any accurate forecast is great. Often the difficulty arises, not because a prisoner is consciously or deliberately deceitful, but because he deceives himself : a man may genuinely think he is going to turn over a new leaf but be incapable when faced with difficulties or temptations of maintaining his good resolution.

148. By observing a man in the limited and artificial conditions of prison life, it is seldom possible to judge whether he is or is not likely to lead an honest life on release, and for this reason we suggest (see paragraph 71) that, while the power of granting early release on licence should be retained, there should be also a procedure for enabling an offender sentenced to detention to become eligible, by good conduct and industry, for release on licence after he has served a fixed portion of his sentence.

After-Care.

149. Some time before a prisoner undergoing preventive detention is due for release he is given an opportunity of an interview with a representative of the Central Association for the Aid of Discharged

Convicts, and arrangements are made, so far as possible, to help him on his discharge. The Association has associates or agents in all districts, and one of these associates meets the man on his arrival at his destination and helps him to find lodgings and work. If the ex-convict has no money, the Association provides him with money for board and lodging for a week or two while he is seeking employment. Despite the difficulty at the present time of finding employment the Association has been remarkably successful in finding employment for those men who are willing to work, and an expression of thanks is due to the many employers who are prepared to offer these men chances of rehabilitating themselves.

As regards women sentenced to preventive detention, the after-care work is undertaken by the Aylesbury Association.

150. In Scotland, the supervision of preventive detention licence-holders is entrusted to the Scottish Central After-Care Council, a body set up in 1931 to undertake after-care work in connection with Borstal inmates, penal servitude licence-holders and preventive detention licence-holders, and to co-ordinate after-care work at local prisons. The members of the Council are appointed by the Secretary of State for Scotland and the Council has a staff of officers remunerated mainly out of public funds. A preventive detention licence-holder is normally placed under the joint supervision of some responsible person who is willing to undertake this liability (often the person by whom the licensee is to be employed) and of an agent of the Central After-Care Council.

CHAPTER XIV.

Reasons for the Repeal of Part II of the Prevention of Crime Act, 1908.

151. As indicated in Chapter VI, we think, that in place of Part II of the Prevention of Crime Act, 1908, there should be a simpler procedure for enabling Courts of Trial (in England Assizes or Quarter Sessions; in Scotland the High Court of Justiciary), to pass sentences of Detention for five to ten years on offenders who are of such criminal habits that their prolonged detention is expedient for the protection of the public.

All witnesses who had experience of the working of Part II agreed that the existing provisions are unsatisfactory, and the fact that so few cases have been dealt with under these provisions show that they have been ineffectual for the purpose for which they are intended.

152. Part II of the Act is framed on the principle that a sentence of preventive detention is to be supplementary to a sentence of penal servitude. Each of these two sentences rests on a separate finding by the jury. The indictment alleges that the accused (*a*) has committed a specific offence, and (*b*) is a habitual criminal. If both these allegations are proved to the satisfaction of the jury and if the Judge passes a sentence of penal servitude in respect of the specific offence it is then open to him, if he thinks it is expedient for the protection of the public, to pass a sentence of preventive detention on the strength of the second finding of the jury, namely, the finding of habitual criminality.

The provisions of the Act relating to the charge of habitual criminality are cumbersome, and various suggestions have been made to us for their amendment in points of detail. It is, however, unnecessary to discuss in detail the statutory provisions relating to this charge, since these provisions are dependent on the scheme of treating the sentence of preventive detention as supplementary to sentence for the substantive offence, and all the evidence we have received points to the conclusion that the sentence of detention should be alternative to, and not supplementary to, any other sentence. If, as we recommend, the Court is empowered to pass on an offender who is convicted of "crime" and has three previous convictions of "crime" a sentence of five to ten years' detention, not in addition to but in lieu of any other sentence, the question whether the offender is of such a character that a sentence of prolonged detention would be preferable to any other sentence, should be placed entirely within the discretion of the Court. Any other system would lead to anomalies. For example, cases may occur where, after an offender has been convicted of a specific offence, the Judge is in a position to pass a sentence of, say, five years'

penal servitude, and if, having regard to the character of the offender, he prefers to pass a sentence of, say, five years' detention, his discretion to impose such a sentence ought not to be fettered. Just as a Court when dealing with an offender between 16 and 21 is empowered to impose a Borstal sentence in lieu of any other sentence if the offender appears to the Court to be of criminal habits and to require a period of discipline and training, so under the scheme we recommend a Court when dealing with an adult offender convicted of a " crime " will be empowered to impose a sentence of five to ten years' detention in lieu of any other sentence if the offender has three previous convictions of crime and if, in the opinion of the Court, he is of such criminal habits that a prolonged period of detention is expedient for the protection of the public.

153. The evidence we have received shows that the existing scheme of adding a sentence of preventive detention to a sentence of penal servitude is regarded with general disfavour, and the grounds in our opinion for abandoning this system may be summarised as follows.

154. One object of requiring a preliminary sentence of penal servitude was to restrict the sentence of preventive detention to offenders convicted of serious crimes, and to prevent its application to " such petty offenders as are a nuisance rather than a danger to society." At the time when the Act was passed there was some apprehension lest the sentence of preventive detention should be used too freely, and the requirement of a preliminary sentence of penal servitude was thought to be a necessary check. Experience has shown that such apprehension is groundless. Moreover, if Courts are empowered, as we propose, to pass a sentence of from two to four years' detention, the possibility of using this sentence in the less serious cases will make still more improbable any tendency to use too freely a sentence of prolonged detention.

The requirement of a preliminary sentence of penal servitude has had the effect of preventing a Court from sentencing to preventive detention a habitual criminal whose crimes have been grave, if the particular offence of which he is convicted is not such as would—according to the principles explained in Chapter III—justify a sentence of penal servitude. In consequence many an offender whose record shows that society ought to be protected against his depredations has been excluded from a preventive detention sentence. We had before us records of many criminals who, in addition perhaps to one or two sentences of penal servitude, have had repeated sentences imposed by Courts of Summary Jurisdiction of six or possibly twelve months' imprisonment. In reply to questions why such offenders should not have been committed for trial with a view to a sentence of preventive detention, we were told that because of the nature of the offences the superior Court would not be likely to impose sentences much longer than can be passed by a Court of Summary Jurisdiction, and that consequently it was not worth while to incur the trouble and expense of proceedings on indictment.

Even when a habitual criminal, after serving many sentences of imprisonment or penal servitude, has been found to be a " habitual criminal " within the meaning of the Act and has served a term of preventive detention, it has not infrequently happened that the subsequent stages of his criminal career have been punctuated with comparatively short sentences, because, unless he were convicted of a crime for which a sentence of penal servitude would have been appropriate, it would have been useless to have indicted him again under the preventive detention provisions.

155. The effect at the present time of the requirement of a penal servitude sentence is to limit the operation of the Act more closely than was contemplated when the Act was passed in 1908. Many offences which would in 1908 have been punished by sentences of penal servitude, are to-day punished by sentences of imprisonment; and this change in the practice of the Courts excludes from the operation of the Act many offenders who would in 1908 have been liable to preventive detention.

156. Some Judges have commented in Court on the disadvantages of this limitation. A common objection is that it handicaps them in dealing with offenders for whom a long period of detention for the protection of the public would be appropriate, but a sentence of penal servitude is inappropriate either because of the nature of the offence or because of the character and circumstances of the offender; for example penal servitude may seem unsuitable because the habitual criminal is old or infirm, or a weakling in mind or character.

157. The question has been raised whether in place of the requirement of a preliminary sentence of penal servitude there should be a requirement of a preliminary sentence of imprisonment for, say, six months: but in our view the imposition of a preliminary sentence serves no useful purpose and is inconsistent with the objects of a sentence of Detention. So far as the object of Detention is the protection of society, this can be effected by sending the offender straight to a Detention Establishment, and so far as the object is to train the offender, it is better that the training should start at once.

158. It may be added that the dual sentence is apt to create the impression that the offender is being punished twice for the same offence. Theoretically the preliminary sentence of penal servitude is imposed in respect of the specific offence and the sentence of preventive detention is imposed in respect of the offender's persistence in crime, but the prisoner can hardly be expected to appreciate the force of this distinction, especially if his several crimes, though not differing in gravity, have been visited by increasing penalties. If a persistent housebreaker has been bound over for his first offence, given six months for his second, a year for his third, eighteen months for his fourth and on the fifth occasion when he commits a crime which is similar in character and gravity

to the preceding ones, gets a sentence of three years' penal servitude plus five years' preventive detention, he not unnaturally feels that the sentence of three years' penal servitude takes account of his criminal record and that the sentence of preventive detention is a second punishment.

159. We, therefore, in drawing up proposals for revised methods of dealing with persistent offenders have excluded any idea of combining sentences of detention with sentences of penal servitude or imprisonment, and for this reason we recommend that Part II of the Act of 1908, which is framed to provide for such a combination of sentences, should be repealed.

SUMMARY OF CONCLUSIONS.

160. We give below for convenience of reference a short summary of the principal points in our report. Such a summary is necessarily incomplete and reference should be made to the text at the paragraphs quoted for a full explanation of our proposals.

(1) When an offender first comes before a Court, it is essential that he should be dealt with in the manner best calculated to prevent his becoming a persistent offender. For this purpose great importance attaches to the proper use of Probation, Home Office Schools and Borstal training for young offenders (paragraphs 12 and 13).

(2) The methods available to the Courts for dealing with persistent offenders over the age of 21 are unsatisfactory (paragraphs 2 to 9). For persistent offenders sentences of imprisonment for comparatively short terms are neither reformative nor deterrent (paragraphs 23 and 26).

(3) Two new forms of sentence should be instituted—

(*a*) a sentence of Detention for any period of not less than two years and not more than four years (paragraph 40);

(*b*) a sentence of Prolonged Detention for any period of not less than five and not more than ten years (paragraph 45).

(4) The power of imposing such sentences should be conferred on Courts of Assize and Quarter Sessions in England. In Scotland the High Court of Justiciary and Sheriff Courts should be empowered to pass a sentence of Detention, i.e., a sentence for a period of not less than two and not more than four years, and the High Court should be empowered to pass a sentence of Prolonged Detention, i.e., a sentence for a period of not less than five and not more than ten years (paragraphs 41 (*a*) and 45).

(5) Subject to the conditions mentioned below, it should be within the discretion of the Court to pass a sentence of Detention or of Prolonged Detention in lieu of, but not in addition to, a sentence of imprisonment or penal servitude (paragraphs 40 and 45).

(6) *Sentences of Detention.*—(*a*) The Court should be empowered to order Detention (i.e., for a period of not less than two and not more than four years) in lieu of imprisonment or penal servitude where an offender is convicted of an offence punishable by imprisonment for two years or by penal servitude, and it appears to the Court that by reason of the offender's criminal habits or tendencies his detention is expedient for the prevention of crime (paragraphs 41 (*a*) and (*b*)).

(*b*) In England there should be a provision, as at present in regard to Borstal detention, enabling a Court of Summary Jurisdiction after convicting an offender to commit him to a Court of

Assize or Quarter Sessions for a sentence of detention. In such cases there should be power to admit an offender to bail while awaiting sentence and to require him where practicable to submit himself for medical examination (paragraph 41 (*a*)).

(*c*) Before a sentence of Detention is passed, the Prison Authorities should be required to submit to the Court a statement containing a report from the prison Medical Officer on the mental and physical condition of the offender, such information as can be collected as to his history and circumstances and observations as to his suitability for a sentence of Detention. The Home Office in England and in Scotland the Scottish Office should keep the Judicial Authorities informed of the types of Detention Establishments available and of the classes of offenders received into such establishments (paragraph 41 (*c*)).

(7) *Sentences of Prolonged Detention.*—(*a*) The Court should be empowered to order Prolonged Detention in lieu of imprisonment or penal servitude if the offender has been convicted of a " crime " and has, since attaining the age of 16 years, at least three previous convictions of crime, and the Court is of opinion that his criminal habits and mode of life are such that his detention for a lengthened period of years is expedient for the protection of the public (paragraphs 45 and 49).

(*b*) " Crime " should be defined to cover the more serious offences against property and against the person, including certain sexual offences (paragraph 49).

(*c*) Offenders whose records are such that a subsequent conviction would render them liable to a sentence of Prolonged Detention, should be warned by the Courts of their peril (paragraph 44).

(8) The objects of both types of sentences of detention should be to provide

(*a*) positive and progressive systems of training for all such offenders as are likely to respond to such treatment, including particularly those between the ages of 21 and 30;

(*b*) for the custody of all offenders under conditions designed so far as practicable to fit them to take up life on release under normal social conditions (paragraphs 40, 46, 48 and 65).

(9)—(*a*) There should be various Establishments for persons sentenced to Detention and Prolonged Detention with varying conditions to suit the different types of persistent offenders (paragraph 51). For the younger offenders and those most likely to respond to reformative and educational influences there should be Training Establishments where methods of treatment should be similar to those which are being tried at Wakefield and Chelmsford, and where the principles which underlie the Borstal system should be adapted so far as practicable to older offenders (paragraphs 61 to 65).

(*b*) The experiment of "labour camps," and "minimum security structures" should be tried for selected classes of offenders (paragraphs 67); also the use of parole systems (paragraph 73).

(*c*) The Prison Commissioners should be free to allocate offenders to such Detention Establishments as may be found to be most suitable, and to transfer offenders from one Detention Establishment to another. There should be powers, similar to those relating to Borstal detention, enabling the Secretary of State to transfer to Detention Establishments persons sentenced to imprisonment or penal servitude, and in special cases to transfer to a prison an offender who may be found to be intractable in a Detention Establishment (paragraph 51).

(10) Full use should be made in Detention Establishments of adult educational classes. The policy should be to make these classes an integral part of the system of training. Class work should be correlated with industrial occupations (paragraph 62).

(11) The desirability should be borne in mind of utilising in Detention Establishments for men the services of some suitable woman or women on the staff (paragraph 64).

(12) The methods of employing offenders in Detention Establishments and the nature of the industrial training provided for them will be of vital importance. The whole subject of the employment of prisoners and of persons sentenced to detention requires special and expert investigation (paragraph 90).

(13) Sentences of detention should be subject to a power in the Secretary of State to release on licence any person after he has completed a third of his sentence if detention has effected its purpose and there is a reasonable probability of the offender abstaining from crime. There should also be power to license an offender after he has completed three-quarters of his sentence on the grounds of his good conduct and industry while under detention (paragraph 71).

(14) A licence should be operative during the currency of a sentence of detention and during 12 months subsequent to the expiration of such a sentence. During this period the offender should be liable, if he fails to observe the conditions of his licence, to be recalled and to be detained for the unexpired period of his sentence or for a period of six months, whichever is the longer (paragraph 75).

(15) Offenders released on licence should be placed under the supervision of an approved Society or a guardian (paragraphs 74 and 78).

(16) The arrangements for the after-care and reabsorption into industry of persons discharged from detention should be reconsidered in connection with the enquiry we propose as to industrial occupations. The two subjects, namely, the subject of industrial methods in prisons and Detention Establishments and the subject of reinstatement in industry of offenders on discharge, are integral parts of one problem (paragraph 90).

(17) The mental condition of offenders is a matter calling for careful attention. There is reason to believe that certain delinquents may be amenable to psychological treatment. The application of this method to criminal cases is, in this country at any rate, in its infancy. Its scope is probably limited and is applicable chiefly to children, juveniles, and adolescents. Further experience is desirable to show to what extent this method can be used effectively (paragraph 116).

A certain number of offenders might benefit by attending under probation approved mental hospitals or out-patient clinics. Use should also be made in suitable cases of child guidance clinics (paragraph 117).

A medical psychologist should be attached to one or more penal establishments to carry out psychological treatment in selected cases. He should be assisted by voluntary women workers who should visit the offender's home and obtain information as to his history and circumstances. This system should be applied to offenders who are willing to be treated during a sentence of Borstal detention or imprisonment, and are recommended for such treatment by the Medical Officer as being hopeful cases if transferred for this purpose to a special establishment (paragraph 121).

(18) The legal distinction between penal servitude and imprisonment should be abolished (paragraphs 123 and 127) .

If penal servitude is merged in imprisonment, the penal servitude convict should, as in the case of the offender sentenced to imprisonment, be enabled to earn absolute remission and the system of release on licence should be abolished (paragraph 134).

In cases where it is desirable that an offender after release should be required to keep the police informed of his place of residence, use should be made of the provisions of section 8 of the Prevention of Crime Act, 1871 (paragraph 133).

We have the honour to be,
Sir,
Your obedient Servants,

J. C. Dove-Wilson.
Herbert du Parcq.
D. Crombie.
W. Norwood East.
Dan Griffiths.*
A. Maxwell.
J. Wellesley Orr.
Mary Stocks.

A. Johnston,
(*Secretary*).
30th April, 1932.

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* Signed subject to the appended reservation.

RESERVATION BY MR. DAN GRIFFITHS.

1. I regret that the Committee could not deem the general causes of crime, including those of habitual criminality, to come within the scope of our terms of reference. (See Report, para. 10.) In my opinion, no study of the criminal is complete unless it deals with the causes of crime, or the conditions that produce criminality. Treatment usually comes after, and not before, diagnosis. It is unscientific to prescribe even " partial remedies " such as training, detention and psycho-therapy without reference to any stated causes. The impression is conveyed that criminality has no cause save the perverted mind or will of the criminal. It is the old, essentially theological view that the criminal is a self-made, wilful, " bad-hearted " and lawless " sinner "—in an otherwise orderly and beautiful world. The modern scientific view, however, is that the criminal is an ill-adjusted or ill-equipped product of a faulty heredity and/or environment—in a very imperfect world. The chaplain and the " cat," the handcuffs and the separate cells are the vestigial remains of the old view. The psychological clinic and the psychiatrist, the probation officer and the prison visitor are the modest beginnings of the new attitude. Social progress demands that we accelerate the pace at which the " old order gives place to the new."

2. " The popular conception of punishment belongs to that archaic group of animistic and other ideas which have long since died out," states Havelock Ellis, the distinguished social philosopher. " The fuller our insight into the springs of human conduct, the more impossible does it become to maintain the antiquated doctrine of retribution," writes Professor William McDougall, the famous psychologist. Not only is punitive repression of the individual a poor palliative or sedative and no final solution of the problem. It is wrong to devote all or even most of our time to the individual. Too much attention to the criminal diverts attention from the main source of the evil—society itself. It is time we tackled crime scientifically, drastically, at its source, as a disease is tackled, as tuberculosis is being tackled with such excellent results, and as cancer has begun to be tackled. We are already applying science—at the wrong end—to the detection of crime. We must now apply science—at the right end—to the prevention of crime. In other words, we must reverse our policy and begin to wage war on the fundamental social and economic causes of crime, beginning with the greatest and the clearest—poverty, unemployment, insecurity, ignorance, ill-health and low mentality.

3. The " Report from the Select Committee on Capital Punishment " (1930) stresses the social causes of crime:

> " Society has its own share in the make-up of its criminals. The criminal is often the product of poverty, of wretched social conditions, of drinking habits, of home environment and social

example. He is a plant of the soil where he was grown, and the blight on his life is due to the community from which he has sprung. Society may be punishing a man whom it has wronged from the hour of his birth. It may be laying its heavy penalties upon crimes, the guilt of which, to a greater or lesser degree, is shared by every member of the community. Every community and every generation fixes the amount of its own crime, and every penalty is a censure upon ourselves."

4. An American view of the problem is worthy of consideration :

"The average citizen becomes impatient and seeks some short and easy method for reducing the dangers to life and property. Swift and sure punishment seems to him the sure cure for criminal tendencies. But no sooner does the reformer look into the subject carefully than he begins to doubt. He comes to realise that crime is but one symptom of a social disease. There is no great danger that we shall overlook the individual causes of crime, but crime as a social product is a newer conception and requires argument and emphasis for its recognition and acceptance. The problem of the immediate future is to educate the people to understand the ideas back of the scientific treatment of crime. The most useful idea that could be received in the public mind would be that the presence of crime need not be a normal feature in a healthy community. Crime is a form of social maladjustment, and is largely a phenomenon which civilisation has produced. Diagnosis of an individual case involves a diagnosis of the community of which the indivdual forms part."

5. Quite apart from the ugliness and the general undesirability of crime as a social sore, quite apart from its cost in economic loss and wastage, and the suffering it brings its victims and perpetrators, there are other and more subtle evils arising out of it which make its removal a matter of vital and urgent necessity. One of these less obvious evils is that "crime" has been raised to the status of an institution and has become a profession and a kind of vested interest to a host of respectable people who make a living out of criminal law administration. Many successful lawyers, detective-story writers and film producers owe the criminal far more than a debt of gratitude. Crime is also one of the best sellers of newspapers and, incidentally, one of the best providers of advertising revenue. Perhaps this vested interest in crime assumed its crudest form when recently an ex-hangman toured our fair-grounds with a realistic gallows. We are not likely to recruit such persons in a campaign against crime. It is not natural to expect people who live *on* crime, rather than *by* crime, to be willing to jeopardise the source of their own livelihood.

Another social danger is that in punishing law-breakers in the old punitive way we may be pandering to a portion of the public

who suffer from a kind of mass sadism and receive pleasurable satisfaction from the contemplation of what prisoners have to endure—and who make the plea of " protecting society " an excuse for indulging their own morbid complexes.

A further harm resulting from the public execration of offenders is that the practice tends to induce in many fortunately-circumstanced persons who have not come into conflict with the criminal law a semblance of a moral superiority which, in the last analysis, they rarely deserve and which retards the growth of that public spirit or " community consciousness " necessary for the ultimate and complete conquest of crime.

6. The causes of crime may be divided into three groups: the economic, the physical and the mental—and the greatest of these is the economic. Frequently the physical and the mental causes arise out of and merge into the economic. Ninety-five per cent. of all indictable offences are classed as " offences against property " whereas only five per cent. are " offences against the person." Two or three of the five per cent. of cases " against the person " have an economic motive or purpose. This means that 97 or 98 per cent. of all indictable offences are crimes in which the economic factor plays a leading part. Three-quarters of all crime is due to sheer poverty—poverty of the means of a decent, civilised life or what is worse, destitution of the elementary requirements of physical existence. It is well to know what we imprison or otherwise punish. What we " bind over " or " fine," or " put on probation " or " lock-up " in seven or eight cases out of every ten is poverty.

" Far too often," said one eminent judicial witness to us, " the alternatives facing these habitual offenders are starvation or crime—a condition which should not be allowed to remain in a civilised community." Of the 120 " preventive detention " men we saw at Camp Hill only 50 were described as " physically and mentally normal " and fit for ordinary labour. The majority were crude house-breakers of the labourer type and a large number were of a very poor mentality. There were not half a dozen of the 120 who were interested in anything educational or intellectual. The brand they overwhelmingly bore was poverty, physical and mental. Wherever we went, to local prisons, convict prisons, detention camp or Borstal, the impression I received was that poverty is easily the first and the greatest cause of crime.

7. In recent years ordinary poverty has been aggravated by unprecedented unemployment. A prison governor informed the Committee that " in many areas these days crime is mainly a matter of unemployment." Witnesses on behalf of Discharged Prisoners' Aid Societies and of the Central Association for the Aid of Discharged Convicts told us that the bulk of their after-care work consisted of finding suitable jobs for men released from prison. The limitations of Unemployment Insurance and of Public Assistance through the operation of such devices as the Means Test have forced

thousands of men and women into vagrancy and crime. It is a condemnation of our social system rather than a commendation of our prison system that the vast majority of those who are in prison to-day are physically and materially better off inside than outside. "The present increase of crime is due to the fact that we are living in a time of extreme economic depression," states the Home Secretary; "almost exactly as unemployment rises and falls, crime rises and falls." The report of the Scottish Departmental Committee on Young Offenders contains an analysis of 50 Borstal cases which shows that 43 of the youths were unemployed when the offence was committed and that four were engaged in street-trading. It is gratifying and promising that these economic factors in the causation of crime are at last receiving official and authoritative sanction:

"It seems clear that acute industrial depression leads to increases of crime . . . . There can be little doubt that the all-round increase of crime in the North was due to industrial depression . . . . The increase in the number of offenders appears to be occurring principally in the North and mainly among the young, and to be the result rather of industrial depression than of any increase of juvenile depravity. It may be hoped that when trade and industry improve, crime may diminish."—"Criminal Statistics" 1929, Cmd. 3853.

8. Mr. E. W. Milner-Jones, the Recorder, in his charge to the Grand Jury at the Swansea Borough Quarter Sessions, on March 15th, 1932, said:—

> "Unemployment has been so general that it is difficult for young boys to secure employment. They leave school and are unable to find work. Their mothers will not let them stay indoors and they are really turned into the street. When that happens some of them are tempted by bad companions and make bad friends. The result is that we have these many small charges of breaking into lock-up shops. There are ten or eleven boys under the age of twenty to come before you. Let us hope that if times are going to improve as it is prophesied they are, that these boys will in future be able to get employment, and that we shall not have these numerous cases here."

9. Mr. Justice Humphreys, presiding at the Manchester Assizes on April 18th, 1932, said:—

> "I do not think that there is any cause for alarm as to the law-abiding habits of the great mass of the population of this country. We cannot expect to have hundreds of thousands of men out of work without having some increase in crime such as larceny and shop-breaking. It is in that direction that the great increase in crime is to be found. There seems to be no indication, so far as I can gather, of any serious increase in any other class of crime."

10. Mr. Justice McCardie, in his charge to the Grand Jury at the Essex Winter Assizes on February 5th, 1932, said:—

> "We must remember that the amount of crime in a country depends not only upon the general economic conditions, but

also upon the physical and mental qualities or deficiencies of the general population."

11. Lieut.-Colonel F. E. Fremantle, speaking in the House of Commons on April 15th, 1932, urged the importance of the physical and mental aspects of the crime problem :—

> " There is no doubt that we are recognising more and more that the prevention of crime depends a great deal upon psychological analysis, investigation and treatment. Medical men are more and more laying stress upon the mental side of health, and in connection with crime we recognise that it is much more important than the physical side. The physical side must not be neglected, but the mental side must come in. We have to take into account the increasing physical and mental dangers of the present time. The rush and hurry, the stress and noise as a result of modern inventions are largely responsible for a great deal of mental illness and indirectly, therefore, are tending towards mental crime. The attention which is now being paid to the mental side of health is all to the good in connection with crime."

12. The Home Secretary, Sir Herbert Samuel, in his recent masterly survey in the House of Commons, performed a great public duty and rendered a conspicuous national service by relating crime statistics to social and economic conditions :—

> " Unquestionably, by far the most important means of securing a diminution of crime is a general improvement in social conditions. The general level of prosperity, comfort, education, the whole standard of civilisation of the nation, is reflected in its criminal statistics."—(Official Report, April 15th, 1932.)

We were requested as a Departmental Committee to enquire into the present methods of dealing with persistent offenders and to advise as to what changes we regarded as desirable in the present criminal law and its administration. Our Report summarises such recommendations as we believe to be desirable and practicable within our terms of reference. In my opinion, however, the larger truth is that the chief changes necessary in our methods of dealing with persistent offenders are in other laws than criminal laws—in the application of economic and social laws, in industrial and commercial laws, in housing and public-health laws, in financial and banking laws. Police and prisons are largely mere substitutes for economic justice, and criminal statistics simply register our social neglect. We have to *govern persons* because we refuse to *administer things*. The great, fundamental evil is the impoverished condition of the mass of our people. The urgent problem is the organisation of industry, the provision of work and the removal of poverty. The presence of crime is a call for large-scale economic planning and social reconstruction.

DAN GRIFFITHS.

APPENDICES.

APPENDIX 1.

See paragraph 1.]

List of Witnesses who gave Evidence before the Committee.

Mr. D. G. Ackroyd, Chairman of the Bradford Discharged Prisoners' Aid Society.

Lady Ampthill, G.B.E., C.I., J.P., on behalf of the Conference of Visiting Justices.

Mr. Arthur Andrews, J.P., Chairman of the Advisory Committee at H.M. Prison, Camp Hill.

Mr. E. H. Tindal Atkinson, C.B.E., Director of Public Prosecutions.

Lieut.-Col. R. E. W. Baird, O.B.E., Secretary, Scottish Prisons Department and formerly Governor of H.M. Prison, Peterhead.

Miss L. C. Barker, C.B.E., Governor of H.M. Prison and H.M. Borstal Institution, Aylesbury.

Sir Chartres Biron, Chief Magistrate of the Metropolitan Police Courts.

Mr. W. H. Blackburn, Organising Secretary of the West Riding Discharged Prisoners' Aid Society.

Sir Ernley Blackwell, K.C.B., Assistant Under-Secretary of State, (Legal), Home Office.

Sir Archibald Bodkin, K.C.B., Director of Public Prosecutions from 1920 to 1930.

Mr. W. J. H. Brodrick, O.B.E., Metropolitan Police Magistrate and a member of the Advisory Committee at H.M. Prison, Camp Hill.

Lieut.-Col. F. Brook, D.S.O., M.C., Chief Constable of the West Riding of Yorkshire.

Dr. Cyril Burt, M.A., D.Sc., Professor of Education in the University of London and Psychologist in the Education Department of the London County Council.

Mr. Roy Calvert, on behalf of the Howard League for Penal Reform.

Mr. John Cameron, Advocate Depute, Lord Advocate's Department.

Dr. A. E. A. Carver, M.A., M.D., D.P.M., Medical Superintendent of Caldecote Hall, Nuneaton.

Rev. W. L. Cottrell, Chaplain of H.M. Prison, Wormwood Scrubs.

Miss C. M. Craven, Honorary Secretary of the Howard League for Penal Reform.

Hon. Lady Cunliffe, C.B.E., President of the National Association of Prison Visitors to Women.

Mr. R. N. Duke, D.S.O., M.C., Assistant Secretary, Scottish Office.

Lieut. G. E. Durham, on behalf of a Liverpool Group who have been investigating the problem of the persistent sexual offender.

Mr. W. B. Fair, Chief Inspector, Metropolitan Police.

Dr. F. E. Forward, O.B.E., F.R.C.S., formerly Senior Medical Officer at H.M. Prisons, Parkhurst and Camp Hill.

Miss Evelyn Fox, Honorary Secretary of the Central Association for Mental Welfare.

Mr. F. Foxall, a Prison Visitor at Manchester Prison.

Mr. Peter Freeman, Member of Parliament for Brecon and Radnor (1929 to 1931).

Dr. T. Saxty Good, O.B.E., M.R.C.S., L.R.C.P., Medical Superintendent of the Oxford Mental Hospital.

Sir Wemyss Grant-Wilson, Director of the Borstal Association and of the Central Association for the Aid of Discharged Convicts.

His Honour Judge Holman Gregory, K.C., of the Mayor's and City of London Court, and Commissioner at the Central Criminal Court.

Dr. G. B. Griffiths, M.R.C.S., L.R.C.P., Medical Commissioner of Prisons from 1920 to 1930.

Mr. Arnold Hall, a voluntary worker who assists ex-convicts.

Captain H. D. Hempton, Governor of H.M. Prison, Leicester.

Mr. Basil L. Q. Henriques, J.P., on behalf of the Conference of Visiting Justices.

Mr. William Horn, Procurator Fiscal of Midlothian.

Miss E. H. Kelly, C.B.E., J.P., Member of City of Portsmouth Bench since 1920, Chairman of Portsmouth Prison Visiting Committee, 1927-1930. Member of Winchester Prison Visiting Committee.

Rev. T. L. Kember, Chaplain at H.M. Prison, Camp Hill.

Captain S. Kemp of the Church Army.

Mr. Norman Kendal, C.B.E., Assistant Commissioner, Metropolitan Police.

Dr. Elizabeth Knight, on behalf of the Women's Freedom League.

Commissioner David Lamb, International Social Secretary of the Salvation Army.

Mr. Malcolm MacNaughtan, Honorary Treasurer of the Surrey and London Prisoners' Aid Society.

Dr. Edward Mapother, M.D., F.R.C.P., F.R.C.S., Medical Superintendent of Maudsley Hospital.

Mr. John Maxwell, Chief Constable of Manchester.

Dr. Hugh Crichton Miller, M.D. M.R.C.P., Honorary Director of the Institute of Medical Psychology.

Dr. William Moodie, M.D., M.R.C.P., D.P.M., Medical Director of the London Child Guidance Clinic.

Dr. J. H. Morton, M.D., Governor and Medical Officer of H.M. Prison, Holloway.

Major C. Pannall, D.S.O., M.C., Governor of H.M. Prison at Camp Hill.

Mr. Alexander Paterson, M.C., one of H.M. Commissioners of Prisons.

Dr. E. A. Hamilton Pearson, M.B., Ch.B., of the Institute of Medical Psychology.

Lord Polwarth, C.B.E., V.D., Chairman of the Prison Commissioners for Scotland from 1909 to 1929 and Chairman of the Scottish Central After-Care Council.

Dr. W. A. Potts, M.A., M.D., Psychological Expert to the Birmingham Justices.

Sir Charles Rafter, K.B.E., Chief Constable of Birmingham.

Mr. A. G. R. Rees, President of the National Association of Prison Visitors.

Mrs. Jean Dewar Robertson, M.B.E., J.P., Member of the Holloway Prison Visiting Committee.

Mr. Roderick Ross, C.B.E., M.V.O., O.C.B., Chief Constable of Edinburgh.

Dr. T. A. Ross, M.D., M.R.C.P., F.R.C.P.E., Medical Director of the Cassel Hospital for Functional Nervous Disorders.

Dr. F. C. Shrubsall, M.D., F.R.C.P., a Senior Medical Officer of the London County Council.

Dr. M. Hamblin Smith, M.A., M.D., Medical Officer of H.M. Prison, Birmingham.

Dr. H. Freize Stephens, M.R.C.S., L.R.C.P., on behalf of the National Council for Mental Hygiene.

Mr. J. D. Strathern, Procurator Fiscal of Lanarkshire.

Mr. R. M. L. Walkinshaw, M.C., Governor of H.M. Prison at Barlinnie, Glasgow.

Mr. Peter Wallace, Governor of H.M. Prison, Aberdeen, and formerly Superintendent of Licence-holders, Prison Commission of Scotland.

Mr. J. A. F. Watson, Secretary of the National Association of Prison Visitors.

Sir Ernest Wild, K.C., Recorder of the City of London.

Dr. H. T. P. Young, M.B., Ch.B., Medical Officer at H.M. Prison, Wormwood Scrubs, and formerly at H.M. Prison, Camp Hill.

Mr. W. Young, Governor of H.M. Prison, Manchester.

Written Statements were received from:—

The Magistrates Association.

Mr. R. M. B. Colquhoun, Superintendent of the Glasgow Discharged Prisoners' Aid Society.

Mr. J. T. Gibbons, Founder of the Wayfarers' Benevolent Association.

APPENDIX 2.

Statistics relating to Persistent Offenders in Scotland.

General.

See paragraph 3.]

In Scotland, as in England, the problem of the persistent offender lies not in the volume of crime, nor in the size of the prison population, but in the fact that the comparatively small number of people sent to prison includes a large proportion who have been previously guilty of offences and are neither reformed nor deterred by the sentences passed on them.

In the year 1930 out of a population of about 4,900,000 in Scotland the receptions into the prisons of persons convicted of offences numbered 14,704, representing 10,903 individuals, some of whom returned to prison again in the course of the same year.

The number of commitments of prisoners of all classes in 1930 was less than in any year since 1919 when it was 11,553 against 15,435 in 1930—equal to 3.2 per 1,000 of the population—but still a great decrease since 1914, when the number was 43,535. The average daily number of prisoners in custody shows a relative diminution from 2,330 in 1914 to 1,315 in the year 1930.

The 14,704 receptions of convicted prisoners in 1930 include 10,545 imprisonments for offences which are more in the nature of nuisances than of crimes, such as breach of the peace, drunkenness, begging, and offences by vagrants. If these cases are excluded, there remain 4,159 imprisonments for more serious offences, which include 1,509 cases of theft, 866 cases of housebreaking, 427 cases of fraud, and 387 cases of attempts to murder, culpable homicide or assaults.

Of the convicted persons received into prison, 8,230 were sent in default of payment of fine.

Of the 10,903 convicted persons received into prison in 1930, no less than 6,829 (or 63 per cent.) had previously been in prison. Many of them had served repeated sentences of imprisonment. 1,511 had been once before in prison; 3,352 had been previously in prison from two to nine times; 934 from 10 to 19 times; and 1,032 had served 20 or more previous terms of imprisonment.

Women.

See paragraph 92.]

What has been said in Chapter X regarding women prisoners in England is applicable to Scotland. During the last five years the average daily number in custody has been less than 200, and in 1930 formed only 10.9 per cent. of the total average daily prison population of Scottish Prisons. In the year 1930 the daily average under the various forms of sentences were: 6 women undergoing penal servitude, 148 undergoing imprisonment, 19 undergoing Borstal detention. No woman was serving a sentence of preventive detention. The total number in prison on the 31st December, 1930, was only 134, of whom 81 were confined in Glasgow (Duke Street) Prison.

In the course of the year 1930, 1,623 women were committed to prison, of whom 1,186 (or 73 per cent.) had been previously imprisoned, and 411 (or 25 per cent.) had been imprisoned on 20 or more previous occasions. As in England, the explanation of the higher degree of recidivism among women prisoners is to be found in the fact that drunkenness accounts for 42 per cent. of the imprisonments among women, as against 19 per cent. among men.

While 90 per cent. of the convictions against women in 1930 were for minor offences, some of the 394 women between 21 and 30 years of age convicted of more serious offences would no doubt have benefited by a period of training; and a sentence of prolonged detention might have been found suitable for a few of the more hardened offenders of maturer age.

APPENDIX 3.

See paragraph 33.]

NUMBER OF PERSONS SENTENCED TO PREVENTIVE DETENTION DURING THE YEARS 1909 TO 1930.

England and Wales.

Year.	Numbers sentenced to Preventive Detention.		Numbers sentenced to Preventive Detention divided according to the period of such sentence.		
	Males.	Females.	5 years.	½–9 years.	10 years.
1909* ...	45	1	33	9	4
1910 ...	177	1	154	21	3
1911 ...	55	2	56	1	—
1912 ...	88	1	82	6	1
1913 ...	64	3	52	9	6
1914 ...	42	1	23	14	6
1915 ...	11	—	8	2	1
1916 ...	21	—	14	3	4
1917 ...	20	2	16	3	3
1918 ...	20	—	12	7	1
1919 ...	19	1	17	3	—
1920 ...	41	3	36	7	1
1921 ...	58	3	56	4	1
1922 ...	33	2	31	3	1
1923 ...	27	—	24	2	1
1924 ...	38	—	28	10	—
1925 ...	27	—	21	5	1
1926 ...	22	1	17	6	—
1927 ...	39	2	30	11	—
1928 ...	31	—	25	6	—
1929 ...	29	—	19	9	1
1930 ...	37	—	28	9	—
Totals...	944	23	782	150	35

* Act came into operation from 1st August, 1909.

Scotland.

Year.	Number sentenced to Preventive Detention.		Numbers sentenced to Preventive Detention divided according to the period of such sentence.		
	Males.	Females.	5 years.	6–9 years.	10 years.
1909 ...	—	—	—	—	—
1910 ...	38	3	28	11	2
1911 ...	21	—	18	3*	—
1912 ...	7	—	6	1†	—
1913 ...	8	—	7	1	—
1914 ...	4	—	2	2	—
1915 ...	—	—	—	—	—
1916 ...	2	—	1	1	—
1917 ...	3	—	2	1	—
1918 ...	4	—	2	1	1
1919 ...	2	—	2	—	—
1920 ...	3	—	2	1	—
1921 ...	3	—	3	—	—
1922 ...	6	—	6	—	—
1923 ...	5	—	5	—	—
1924 ...	1	—	1	—	—
1925 ...	1	—	1	—	—
1926 ...	—	—	—	—	—
1927 ...	—	—	—	—	—
1928 ...	1	—	1	—	—
1929 ...	4	—	4‡	—	—
1930 ...	—	—	—	—	—
Totals...	113	3	91	22	3

* 1 Sentence of P.D. quashed.
† Sentence of P.D. quashed.
‡ 2 Sentences of P.D. quashed.

APPENDIX 4.

See paragraph 34.]

MEMORANDUM BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT, PREFIXED TO A DRAFT OF RULES PRESCRIBING CONDITIONS IN PREVENTIVE DETENTION, LAID BEFORE PARLIAMENT ON THE 17TH FEBRUARY, 1911.

In laying these draft rules before Parliament in pursuance of section 2 of the Prison Act, 1898, the Secretary of State thinks it desirable to explain briefly the object of the rules and the nature of the sentences of Preventive Detention to which they relate.

The rules are made under section 13 (2) of the Prevention of Crime Act, 1908, which directs that persons undergoing Preventive Detention are to be

generally subject to the convict prison rules, but requires the Secretary of State by new rules to modify the conditions " in the direction of a less rigorous treatment."

The present rules have been prepared by the Prison Commissioners, who have done their utmost to carry out the intention of the statute and to make the conditions of Preventive Detention as easy as circumstances will allow. But it should be clearly understood that no modification of the conditions which prevail in convict prisons can alter the essential fact that Preventive Detention is a form of imprisonment. Several hundred criminals of the most skilful and determined class will have to be confined for considerable periods within prison walls and to be controlled by a staff which cannot be made very numerous without undue expense. During their detention, they must always be either within locked cells or under close supervision; discipline must be firmly maintained, and hard work enforced. If there were neglect or relaxation in the supervision and discipline, it would inevitably lead to escape, or mutiny, or vice.

While, therefore, it is possible to maintain the conditions of sufficient food, adequate clothing, warmth, and shelter, which all convicts enjoy, and to allow further relaxations in the way of conversation and association, of minor luxuries, and to some extent of recreation, the essential fact remains that, after every possible mitigation has been allowed, the convict is completely deprived of his liberty and is subject to constant supervision, control and compulsion in all that he does. Only the great need of society to be secured from professional or dangerous criminals can justify the prolongation of the ordinary sentences of penal servitude by the addition of such Preventive Detention.

It appears a matter of much importance that this should be clearly understood and that the idea should not grow up that Preventive Detention affords a pleasant and easy asylum for persons whose moral weakness or defective education has rendered them merely a nuisance to society.

The Secretary of State is satisfied that no case has been established, either from the statistics of crime or otherwise, for an increase in the general severity of the criminal code, and certainly no increase of general severity was within the intention of Lord Gladstone in proposing, or the House of Commons in passing, the Prevention of Crime Act. On the contrary, it was intended to introduce such mitigation into the conditions of convict life as would allow the longer detention of those persons only who are professional criminals engaged in the more serious forms of crime. This is indicated in the Act by the fact that Preventive Detention cannot be imposed except for a crime of such a character that it has justified the passing of a sentence of penal servitude. It was, moreover, repeatedly stated by Lord Gladstone in the course of the Debates that the Bill was devised for the " advanced dangerous criminal, " for " the persistent dangerous criminal," for " the most hardened criminals ": its object was " to give the State effective control over dangerous offenders ": it was not to be applied to persons who were " a nuisance rather than a danger to society," or to the " much larger class of those who were partly vagrants, partly criminals, and who were to a large extent mentally deficient." On the 12th June, 1908, he explained to the House of Commons that the intention was to deal not with mere habituals but with professionals: " For 60 per cent. the present system was sufficiently deterrent, but for the professional class it was inadequate. There was a distinction well known to criminologists between habituals and professionals. Habituals were men who drop into crime from their surroundings or physical disability, or mental deficiency, rather than from any active intention to plunder their fellow creatures or from being criminals for the sake of crime. The professionals were the men with an object, sound in mind—so far as a criminal could be sound in mind—and in body, competent, often highly

skilled, and who deliberately, with their eyes open, preferred a life of crime, and knew all the tricks and turns and manoeuvres necessary for that life. It was with that class that the Bill would deal."

Although, therefore, the term "habitual" is used, it is clear that not all habituals but only the professional class is aimed at by the Act, which not only restricts the use of Preventive Detention to those already found deserving of three years' penal servitude, but provides many safeguards against the too easy use of the new form of punishment.

It appears specially desirable that this should be impressed on the police authorities who have to take the initiative in the proceedings which result in the criminal's being dealt with under the Act. After the passing of the Act a circular was issued by Lord Gladstone, in which he endeavoured to explain its object and to indicate the limitations within which it would be applied. But it has proved a matter of much difficulty to secure uniform action among 180 different police authorities throughout the country, not all equally versed in the settlement of questions of this grave character. On the one hand, a large number of cases have been presented to the Director of Public Prosecutions which he has felt bound to reject, and on the other it appears from an examination of the records of convicted prisoners that many, fully qualified within the statutory definition of "habitual criminal," have not been presented at all.

The Secretary of State proposes, therefore, to issue further instructions to the police to guide them in the selection of cases for presentation, and thus to mitigate the inequalities which are likely to arise when the first stage of the procedure rests with so many different authorities. He proposes that the police should not, save for special reasons which they must fully state, submit any case to the Director of Public Prosecutions, unless, in addition to the qualifications expressly required by the Act, the criminal (*a*) is over 30 years old; (*b*) has already undergone a term of penal servitude; and (*c*) is charged anew with a substantial and serious offence.

On the other hand, in order that the range of choice open to the Director of Public Prosecutions may be extended, the police will also be enjoined to consider carefully, with a view to submission to the Director, the case of every person who is qualified under the Act and also comes within these rules.

The point of most importance, and also of most difficulty, is to restrict the selection to cases where the last offence is in itself substantial and serious. On the one hand, mere pilfering, unaccompanied by any serious aggravation, can never justify proceedings under the Act. The amount stolen or embezzled is of course no certain measure of the criminal's guilt; but where the amount is small and there is no violence or treachery, public feeling is shocked, and more harm than good is done, by the imposition of a long term of detention. On the other hand, violence conjoined with other crimes, skill in crime, the use of high-class implements of crime, and the possession of firearms or other lethal weapons, will always count as important adverse factors. The general test should be—is the nature of the crime such as to indicate that the offender is not merely a nuisance but a serious danger to society? In deciding on this point, the police will always be able to count on the assistance and guidance of the Director of Public Prosecutions to whom they present the cases for indictment under the Act, and who is able to bring to bear on them an experience far wider than that of any police authority. While it is impossible for him, as it is for the police, to say beforehand what crimes would, in the opinion of the Judge who may try them, qualify for penal servitude, he will be able to take a general survey of all the cases coming within the scope of the Act, and to exclude from indictment under it those cases where the crime charged is not in his opinion of sufficient gravity.

It will further be important that the police should obtain information not only (as required by statute) regarding the convict's mode of life since his last

discharge from prison, but also regarding his whole previous career. It is known that some convicts have obtained nominal employment after discharge, not in good faith, but in the hope that they will thereby on their next conviction be excluded from indictment as habitual criminals: and a general survey of the convict's life and conduct is therefore necessary.

The Secretary of State trusts that when these views are understood by the police authorities of the country, the presentations under the Act will proceed on more uniform and restricted lines than hitherto, and will at the same time cover more accurately the area of professional crime. As time passes and experience of the new system accumulates, it may be possible to lay down more definite rules, and to perfect the principles of selection. It will also, he hopes, be possible to form a better idea of the amount of punishment involved in a sentence of Preventive Detention, and possibly to introduce new mitigations in its conditions. In any event, however, the Act must not be resorted to as an easy and painless solution of the difficult problem of habitual crime, but must rather be regarded as an exceptional means of protecting society from the worst class of professional criminals.

HOME OFFICE,
16*th February*, 1911.

APPENDIX 5.

See paragraph 34].

COPY OF CIRCULAR LETTER, DATED 21ST JUNE, 1911, ISSUED BY THE HOME OFFICE TO POLICE AUTHORITIES.

Home Office,
Whitehall,
21st June, 1911.

PREVENTIVE DETENTION.

SIR,

I am directed by the Secretary of State to transmit, for your information, copy of the Rules which he has made under s. 13 of the Prevention of Crime Act, 1908, for the carrying out of sentences of Preventive Detention.

The Secretary of State has given much attention to the cases of offenders who have been indicted as habitual criminals with a view to sentences of Preventive Detention being passed on them under the Prevention of Crime Act, 1908, and it appears to him that it is most desirable that the Police should in future endeavour to select more carefully, and on more uniform lines, the cases which they present under the Act to the Director of Public Prosecutions. He learns, on the one hand, that many cases are presented to the Director which were not really within the intention of Parliament in passing the Prevention of Crime Act, 1908; and, on the other hand, he finds that some Police forces appear to overlook a large number of cases which, judging by the previous convictions of the offender, are eminently suitable for presentation.

Mr. Churchill thinks that he may with advantage lay down certain rules for the guidance of the Police in this matter. The Act itself prescribes two conditions:—

(1) That the offender must, since attaining the age of 16, have been at least three times convicted of crime as defined in the Schedule to the Act; and

(2) That he must be "persistently leading a dishonest or criminal life."

There are, in addition to these, three other conditions which should, he thinks, be present in almost every case. As they are not statutory conditions, there may be occasional exceptions; but no case should be presented to the Director of Public Prosecutions where any of these conditions is absent except for strong and special reasons, and the reasons should be explicitly and clearly stated in the application:—

(*a*) *The offender must be over the age of* 30 *years.* Below that age, the case can hardly ever be so hopeless as to justify recourse to Preventive Detention.

(*b*) *The offender must have undergone at least one sentence of penal servitude.* Unless penal servitude has been tried and failed, it will generally be wrong to propose the prolonged punishment of penal servitude *plus* Preventive Detention.

(*c*) *The new offence with which the offender is charged must be a substantial and serious crime.*

On the other hand, the Police should carefully consider, with a view to presentation to the Director of Public Prosecutions, *every* case which comes within the Act and within these three rules.

On the question what is to be regarded as a substantial and serious offence and for further explanation of the whole subject you are referred to the Memorandum prefixed to the draft Rules laid before Paliament on the 17th February last, a copy of which is enclosed herewith.

I am to request that this letter may be substituted for the letter addressed to you on the 4th March last, enclosing a draft of the Rules.

I am,
Sir,
Your obedient Servant,
EDWARD TROUP.

APPENDIX 6.

See paragraph 49].

CERTAIN SEXUAL OFFENCES WHICH ARE NOT FELONIES BUT WHICH IN THE OPINION OF THE COMMITTEE SHOULD BE INCLUDED IN THE DEFINITION OF "CRIMES" WHICH RENDER PERSISTENT OFFENDERS LIABLE TO PROLONGED DETENTION.

Indecent assault on female (24 & 25 Vict., c. 100, s. 52).
Indecent assault on male (24 & 25 Vict., c. 100, s. 62).
Assault with intent to commit sodomy (24 & 25 Vict., c. 100, s. 62).
Gross indecency between males (48 & 49 Vict., c. 69, s. 11).
Indecent exposure (Common Law and, in respect of previous convictions, 5 Geo. IV., c. 83, s. 4).
Abduction of girl under 18 to have carnal knowledge (48 & 49 Vict., c. 69, s. 7).
Carnal knowledge of girl between 13 and 16 (48 & 49 Vict., c. 69, s. 5 (1)).
Permitting defilement of girl between 13 and 16 (48 & 49 Vict., c. 69, s. 6 (2)).
Procuration (48 & 49 Vict., c. 69, ss. 2 & 3).
Detention in brothel (48 & 49 Vict., c. 69, s. 8).
Male person living on earnings of prostitution (61 & 62 Vict., c. 39, s. 1).
Solicitation by male person (61 & 62 Vict., c. 39, s. 1).
Incest (8 Edw. 7, c. 45, ss. 1 & 2).

(14421—52) Wt. 701—967 2015 6/32 P. St. G. 335